Supreme Court, U.S.
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IN THE

Supreme Court of the United States

Yva G. Scringer

Petitioner

v.

Green Point Bank

Respondent

Brief for Petitioner

On Petition for Writ of Certiorari
To The Court of Appeals for the Second Circuit

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QUESTIONS PRESENTED FOR REVIEW
Rule 14.1(a)

1. Are not "dismissal" of a case and "Closing" of a case totally different concepts and stages of a petition, so that even a bankruptcy Judge may not interchange the terms and equate the two against debtor's interest since an unclosed case means that its stay is still not lifted?

2. Can multiple missing transcripts be considered "harmless error" and permitted in view of Bankruptcy Rule 5007 and 28 U.S.C. para 753 and 28 U.S.C. para. 80 which mandate the creation and maintenance of the evidentiary record as per Moore's Federal Practice, v.18, Rule 80 on "Transcription error" and protection of Judicial machinery from attack?

3. Can the appearance of cronyism and conflict of interest on the part of a referee be permitted in violation of the spirit and letter of the Part 36 Rules of the Chief Administrative Judge of New York State.

4. Does not Banruptcy Rule 9024, FRCP Rule 60 in entirety encompass and provide relief for precisely the inadvertence, mistake, negligence, surprise, discovery conditions exemplified in the instant case?

5. Should "dismissal" and "Closing" of a case be applied differently and less strictly in one district, e.g. Eastern District of New York, than in another, e.g., Southern and/or Western Districts of New York, thereby conveying the idea that Black people are less entitled to the rigors and benefits of Constitutionally guaranteed "debt relief" than White people?

6. Can "nunc pro tunc" closing of a case (99-21821-575)—after a sale has already occurred on 5/10/01)—satisfy the demands of justice and legitimize a sale conducted while a stay was not lifted?

7.Why did not Judge Craig in 01-15887-608 close previous related case 99-21821-575 if it was in order on 6/19/01, 7/11/01, 7/24/01?

8. Do commercial rights of a bank and a bidder at auction supercede the rights of a property owner, where a stay has not been lifted?

9. Can proscriptions against the "enlargement" of issues before this Court and the Lower Courts apply to this case where surprise, discovery and misconduct abound, precisely consistent with the conditions for relief under Bankr. 9024, Rule 60 generally as set forth by the Bankruptcy Court Judge on 6/19/01 in the instant case 01-15887-608?

PARTIES TO PROCEEDING

Yva G. Scringer, Petitioner

Green Point Bank, Respondent

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SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

In Re:

MOTION

Yva G. Scringer

Petitioner

V

Green Point Bank

Respondent

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1. I, Petitioner, Yva G. Scringer, depose and affirm that I must proceed Pro Se due to the Respondent's provable campaign of intimidation which has culminated in my attorney's abandonment of my case without notice at the last minute, remaining strictly incommunicado and altogether unreachable in person. I therefore ask the Court's forgiveness of any technical deficiencies relative to the Rules which I have endeavored to observe to the best of my ability in re-writing the annexed Petition and, herewith, I request leave to file it myself, just as I have proceeded all along, through Bankruptcy, U.S. District Court and Court of Appeals, Pro Se, with the exception of a brief period at the end of the Court of Appeals litigation and the first Brief submitted to this Court on June 7, 2004.

2. I expect to retain new counsel for purposes of Oral argument, should the Court so favor my Petition for a Writ of Certiorari, but I am prepared to argue it before the Court myself should the need exist

---

Brooklyn, New York
August 15, 2004

Respectfully submitted

Yva G Scringer

Yva G. Scringer, Pro Se
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Tel. 718 622-7112 & 718 783-3899

No.

IN THE
Supreme Court of The United States
CERTIFICATE OF SERVICE

Yva G. Scringer

Petitioner

v.

Green Point Bank

Respondent

I, Yva G. Scringer, Counsel of Record for myself as Petitioner, certify under penalty of perjury, that on August 15, 2004, I delivered to Respondent, Green Point Bank, via U. S. Mail 3 true copies of the "Brief For Petitioner", plus 3 true copies of Appendix On Petition for Writ of Certiorari To The Court of Appeals for the Second Circuit. Plus 3 copies of this Motion I mailed them to the law firm of the Respondent at:

Green Point Bank
c/o Cullen and Dykman Bleakley Platt LLP
Counselor of Record for Respondent
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Att: Mr. Matthew G. Roseman, Esq.

Brooklyn, New York
August 15, 2004

Yva G. Scringer

Yva G. Scringer, Pro Se
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Brooklyn, N.Y. 11238
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OPINIONS BELOW

Bankruptcy Court of the Eastern District ruled that the instant petition is prohibited by reason of a Prejudice Order in a previous case and that appeals therefrom were untimely.

The U.S. District Court of the Eastern District affirmed the Bankruptcy Court rulings.

The Court of Appeals for the Second Circuit affirmed the rulings of the U.S. District Court and denied a petition for rehearing on March 9, 2004

JURISDICTION

U.S. Supreme Court derives its authority from article III of the U.S. Constitution. 28 U.S.C. is the applicable statute whereby judgments of the U.S. Court of Appeals are reviewed

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14TH Amendment of the U.S. Constitution providing equal protection under the law.

Constitutional right to debt relief under Title 11 of the U.S. Constitution.

U.S.C.A. 28, Rule 80, Court transcripts as evidence, necessary to discovery. U.S.C.S. 28 Rule 753 , Rule 5007 Mandatory creation and maintenance of transcripts

Banruptcy Rule 9024, F.R.C.P. Rules 60, 60(b)(1) Relief from judgments, orders, rulings through errors in law, mistake,

inadvertence, surprise, or inexcusable neglect or other reason
Local Rules of bankruptcy relative to administration of the property of the estate and case closing: 2002-1, et al

Bankruptcy rules 718 and 5009 on case closing

STATEMENT OF THE CASE

1) I, Yva G. Scringer, the Petitioner/Debtor filed a Chapter 13 Bankruptcy petition on September, 1999.

2) My Debtor's Plan was confirmed. I am a working senior.

3) I, the Debtor, defaulted on the plan, **suspecting the Bank of sabotaging my ability to stay current (See APP-22 – APP-25).** Also, tenants nonpayment created cash flow problems)

4) The Bankruptcy Estate held only two pieces of property the real property of 831 Quincy, Brooklyn, NY 11221 and 827 Quincy St., Brooklyn, N.Y. 11221

5) The real property, 831 Quincy Street, Brooklyn, N.Y. 11221`,was foreclosed and auctioned on May 10, 2001 while case 99-21821-575 was still open, the stay not lifted.

6) Since that date, I, the petitioner, discovered other shocking facts which, in vain, I also protested in lower courts: Missing transcripts, Trustee negligence, Referee conflict of interest. (a) The adverse interest of the referee and ;(b) the auction was an `insider sale' ;(c)) the Former Trustee did not `formally abandon' the estate, produce reports, or perform any of the Trustee prescribed duties. This culminated in his decision not to take action to `avoid the sale' or otherwise act to preserve the Bankruptcy Estate. See Exhibits in Appendix: (APP-10)(APP-11)(APP-12)(APP-13)(APP-14) The process of the sale was sufficiently flawed to create an "insider sale". Shortly thereafter, the Former Trustee, Gelberg, was removed from office for malfeasance. As proved by the 8/13/01 late (after sale) closing of 99-21821-575, Mr. Gelberg did not perform his duties in this case, which duties were to: (a) Formally abandon the estate, (b) produce reports; (c) performance of the duties prescribed to a Trustee. The missing transcripts as well as the court clerks testify to this. (APP-7) (APP-8).

9) Notice of the crucial action—the 8/25/00 Prejudice Order—was sent not to me, the petitioner, who was, perforce, acting Pro Se, due to abandonment by my then attorney, Jacubowitz—but it was sent to Jacubowitz himself. That attorney represented me initially, but abandoned the case soon after the filing of the Plan. I, The Petitioner, was thus crippled both by his abandonment of me and by the stigma associated with the Prejudice Order which prevented me from being able to retain necessary professional counsel for extended critical periods thereafter. Mr. Jacubowitz, while yet the attorney of record, having received full payment for his services, $3000, attended no court dates, after the initial filing, filed no documents protesting the illegal actions that were ensuing by Trustee and Referee, up to and including the May 10, 2001 sale of the property of the estate. Furthermore, I was abandoned by the Trustee who had been charged with the responsibility of overseeing the estate.

10) The adverse interest of the referee was discovered when my friend, delivering Motion papers for me, went to his office to help me collect the `surplusage' of the sale of the property from the Referee and found he shared offices with the creditor. We were appalled by the gross violation of spirit and letter of (a) Bankruptcy Code; (b) New York Mortgage and `Foreclosure Law; (c) Part 36 of the Rules of The Chief Judge of the State of New York. This information was not discovered until the summer of 2003. It was discovered only by accident and is unlikely to have been discovered except by accident, as the case evolved as previously stated. Like the fruitless ordering of key transcripts—which, to date, have not been produced--the discovery of the Referee's conflict of interest came as a shocking surprise, along with the negligence and inexcusable neglect of the Trustee whose Final Reports, filed after the sale, prevented 99-218210-575 from being closed until 8/13/01—3 full months after the illegal sale

11) Gross conflicts of interest on the part of the Referee were discovered that violate spirit and letter of the law upon which are based Part 36 of the Chief Judge Rules of State of New

York in addition to case precedents and law abundantly set forth in: Betcher v. Rademacher, 35 Misc. 2d 693, 230 N.Y.S. 2d 535 (1962); Bennett v. Fish, 2 Misc. 2d 1051, 157 N.Y.S. 2d 871 (1956); Wolfers v. Duffield, 72 Hun. 637, 25 N.Y.S. 374 (18933); Baker v. Baker, 70 Hun. 95, 23 N..S. 1083 (1893); Kingsland v. Chetwood, 39 Hun. 602 (1886). Citibank v Shroeder, 266 A.D. 2d 332, 698 N.Y.S. 2d 304 (2d Dept. 1999), citing Corporate Investing Co. v. Mount Vernon meal Products Co., Inc., 206 App. Div. 273, 276, 200 N.Y.S. 372, quoting Wilcox v. Drought, 36 Misc. 351, 73 N.Y.S. 587 Lobbet v Galpin, 228 A.D. 65, 239 N.Y.S. 76(4th Dept. 1930); Corporate Investing Co. v. Mt. Vernon Metal Products Co., 206 A.D. 273, 200 N.Y.S. 372 (2nd Dept. 1923), Roslyn Sav. Bank v. Jones, 69 Misc. 2d 733, 330 N.Y.S. 2d 954 (1972) **All above citations show Referee powers and Responsibilities.** (See APP-13). The Referee's conflict of interest in my case supported the Trustee's failings in my case. See Security Pacific National Trust Co. v Dusevic: Trustee in bankruptcy has full authority over estate property when case is filed and property leaves estate only if Trustee formally abandons it or if case is closed. 11 U.S.C.A, Section 541(a)(1) Mertens, William J , Alex W. Bandrowski, James A. Clark and Russell Franz, petitioners, v Hewitt Associates on Writ of Certiorari to the U.S. Court of Appeals for the 9th Circ. (June 1, 1993) Midlantic Nat'l Bank v NJ Dept. of Environmental Protection. Certiorari to the U.S. Court of Appeals for the 3d Circ. No. 84-801. Trustee's right to abandon property subject to mandates re: Public safety; also "judge made rule must give way when it comes into conflict with a statute." Scharmer v Carolton Mfg Co. 6th Cir. 525 F. 2d 95, 98 : Title to Property of estate is vested in Trustee, title revests in debtor when Trustee consciously, [formally] abandons it.". My case, 99-21821-575 remained open because Bankruptcy court could not close it without Trustee Reports. The results of the former Trustee's (Gelberg's) dereliction of duty is readily seen in the pittance ($4,265.30) produced by the illegal sale of 5/10/01, alleged to yield a "surplusage" in that paltry amount when the house

was sold for $180,000 and there was an outstanding debt to the bank of $120,000 approximately, with negligible additional water taxes. Indeed, the referee paid himself twice as revealed in the auction documents. Clearly, 29 U.S.C.A. Sect. 1341 Re Breach of fiduciary responsibility resulting in lower benefits (e.g., surplusage) in a foreclosure sale at auction. 11 U.S.C.A, Section 541(a)(1) gives the only acceptable conditions for closing case. Judge Laura Taylor Swain's Confirmation of February 11, 2000 provided for special oversight on the part of the Trustee. This responsibility is addressed in the Bankruptcy Reporter in various places as follows: BankR 2492,2511, 2531, 3131, 3135, 3441: "Trustee in bankruptcy has full authority over estate property when case is filed and property leaves estate only if Trustee formally abandons it or if case is closed." When I specifically invoked the Local Rules of Bankruptcy on 7/11/01 (2002-1, et al, 6004-1, 6005-1, 6007(b)), the court had grounds to reverse, set aside, vacate the illegal sale of 5/10/01. That is why Judge Craig reversed her 6/19/01 Hearing position that she could not modify, or revisit another judge's Order. Judge Craig called for a "confirmable plan" on 7/11/01 because of the merit of my Motion on 7/9/01, that is, the Order to Show Cause citation of the local rules that had been breached. My complaint to Grievance Committee re: Former Trustee Gelberg speaks to my realization of the manner in which I have been harmed by his dereliction. My Grievance is appended as an exhibit, APP-10. Similarly, my Complaint to Grievance Committee re: Referee Horowitz shows I was most astutely and painfully aware of the precise failings of these officers of the court, whose actions suggest fraud and misconduct as much as they do dereliction of duty and I ask that the court look into these serious allegations of substance (See APP-10, APP-11, APP-20). The Former Trustee's lack of filings and reports inarguably established by the fact that the bond could not be cancelled, nor the Trustee discharged, nor the case closed until 8/13/01, --a full three months after the sale which was therefore illegal.

assistance until Fall of 2003, the lack of timely discovery should not be counted against petitioner.

12) The Debtor has prepared an action against the Former Trustee and may include the Referee for contempt and violation of statutory duty applicable to this case by virtue of Rules 322, 323, and 324, as well as violations of the spirit and the letter of the Part 36 Rules of the Chief Judge of the State of New York.

13) A lawyer, no longer handling my case, had been retained briefly and no other lawyer has worked on this case since the original `plan' was confirmed in February of 2000. A Mr. Farinella was engaged on another project in January 2003, in order to protect the remaining property of the estate, 827 Quincy St., Brooklyn, N.Y. 11221, which was thereby saved from auction by Delta Funding, through refinance she was able to accomplish by virtue of the additional time.

Debtor suggests these facts qualify under 11 USC section 9024 and FRCP 59(b) and 60. These facts support the exception to the time limit for reopening on the basis of mistakes, excusable neglect, newly discovered evidence, and possible fraud as required by 11 USC section 9024 and FRCP 59(b) and 60. Accordingly, an action has been prepared against the former Trustee and may include the Referee for contempt and violations of statutory duty applicable to this case by virtue of Rules 322, 323, and 324.

WHEREFORE, I, the Petitioner, request the sale be found to have been illegal in order to allow me to file and prosecute a claim against the Respondent, Green Point Bank; the Former Trustee Gelberg and possibly the Referee Horowitz; and former attorney Jacubowitz for abnegation of their duties and law violations, as well as seek relief through the Title company's insurance which provides for such "omissions, etc."

THE RULES WERE NOT FOLLOWED TO PERMIT THE FORECLOSURE SALE. THE BANKRUPTCY STAY WAS STILL IN EFFECT AT THE TIME OF THE FORECLOSURE SALE BECAUSE THE CONFIRMATION ORDER RETAINED THE PROPERTY IN THE ESTATE, REQUIRING THE FORMER TRUSTEE"S FORMAL ABANDONMENT BEFORE THE STAY WAS LIFTED. THE FORMER TRUSTEE NEVER PERFORMED THIS CONDITION PRECEDENT AS PROVED BY THE FACT THAT JUDGE MILTON WAS ONLY ABLE TO "DISCHARGE THE TRUSTEE, CANCEL THE BOND AND CLOSE THE CASE" ON "8/13/01...EFFECTIVE 6/1/00!" (SEE APP-V)
THIS IS THEREFORE ONE OF THE ERRORS CONTEMPLATED BY FRCP 9024 RULE 60 IN PART AND ENTIRETY TO WHICH THE COURT REFERRED ON 6/19/01 and 7/11/01 AS THE ONLY POSSIBLE BASIS FOR RELIEF FROM THE PREJUDICE ORDER OF 8/25/00. THE OTHER GROSS ERRORS ARE THE MISSING TRANSCRIPTS AND THE REFEREE'S CONFLICT OF INTEREST WHICH COULD NOT POSSIBLY HAVE BEEN DETECTED EARLIER ON, CONFORMING AS THEY DO, RATHER, TO THE CATEGORY OF "SURPRISE, DISCOVERY, ETC.".

On February 11, 2000, Judge Laura Taylor Swain of the Bankruptcy Court issued an Order Confirming the Petitioner's Plan under 199-21821-575. Paragraph 4 of the Order of Confirmation provided that property would revest in the owner when the case was dismissed or closed or otherwise ordered; only then would the automatic stay be lifted. No transcripts exist to clarify departure from Bankruptcy Code, wherein "Dismissal" and "Closing" are equated. The most important legal argument is: the Bank (Greenpoint Bank) did not have authority to foreclose on the real property and sell it because the 'Bankruptcy Stay' issued in case 99-21821-575 was not removed. The stay was in effect when the bank foreclosed and auctioned the property on May 10, 2001.

The stay was in effect because of the order of the judge. The judge's order directed that the property remain in the `estate' until the case was ended. (see p.2, paragraph 4 of the order of Judge Swain dated February 11, 2000: "The debtor's real property shall remain property of the estate, title to which is vested in the Trustee until dismissal or closing of the case, or until further order of this court."). This is a specific directive that required the property stay in the estate after the CH 13 plan was confirmed. While it may be argued as to whether this change from normal Bankruptcy Procedure as outlined in section 362©(1) and section 1327 (b) of the Code is allowable, the power of the judge does not extend to making "case dismissal" and "case closing" equivalent since doing so qualifies as a "judge made rule" that unconstitutionally reduced my 14th amendment right to: "equal protection under the law" and right to debt relief as provided in Title 11. The nonexistence of transcripts of this and other key hearings is indefensible and the lower Courts should have given me the requested relief for this reason alone. On 6/19/01 I ordered the indispensable Judge Swain transcript of 8/25/00 Prejudice Order Hearing and on 12/02/02 I ordered the Judge Swain transcript of the 2/11/00 Confirmation Hearing—neither of which were ever produced in the Bankruptcy Court, in the District Court or the Court of Appeals. The consequence of the Judge's order regarding vesting of the estate at the time of the confirmation of the 99-21821-575 Petition was that former Trustee Stuart Gelberg (who recently resigned for other gross misconduct in that office) had a legally binding obligation to have "formally abandoned" the property at 831 Quincy St., Brooklyn, N.Y. 11221. Because he did not, the case could not be closed until 8/13/01, after the 5/10/01 illegal sale. The Bankruptcy Code clearly mandates that Formal Abandonment shall be accomplished only by means of following Local Rules 2002 -1, 2 ,3, etc., which requires: (a) Notification of intent to sell the property that is under the Trustee's charge; (b) Obtaining authority from the Court to retain an auctioneer; (c) Allowing

Debtor, thereby, the opportunity to interpose objection (s), for which, in my case, Judge Laura Taylor Swain had provided indisputable rights in this respect by stating that the Order of Dismissal with Prejudice, allowed exception where permission was obtained. (BR 718, BR 5009). The Rules for the Trustee are set forth in the United States Trustee Program. "Accounting Office Memorandum of Understanding, Amended memorandum of understanding between the Executive Office for the United States Trustees and the Administrative Office of the United States Courts regarding case closing and post confirmation [title] 11 Monitoring" Case closing and opening legal complaints are also shown in Wade (1993, CA7 2"d) 991 F2d 402, 24 BCD 210, 28 CBC2d 1253, CCH Bankr L Rptr P 75216, reh den (1993, CA7) 1993 US App. Avery (2002, BC ED Cal) 272 BR 718: The Trustee did not file any of the required documents to abandon' the estate as evidenced by the Court's ability to close the case only on 8/13/01. (See APP-14). The sale of the real property was ineffective because the court's order in case #99-21821-575 directed that the property remain in the estate and not vest in the debtor until the end of the case (see paragraph 4 of the order of Judge Swain dated February 11, 2000; 'The debtor's real property shall remain property of the estate, title to which is vested in the Trustee until dismissal or closing of the case, or until further order of this court." If this order was legal; see section 1327 (b) of the Bankruptcy Code), then it continued the stay; see section 362 (c)(1) of the Bankruptcy Code)). After the case was dismissed, this required the Former Trustee to formally abandon the property before the bankruptcy stay was lifted. **Since the Former Trustee failed in his duty to formally abandon the property (as evidenced by the fact that the court could not Close the case until 8/13/01)**, the bank did not have the right to foreclose the property at that time. In the 9/26/01 Hearing on 99-21821 before Judge Milton, Trustee stated "the reports must have been lost, but was a mere administrative detail". (No transcripts exist for this hearing either). Court clerks earlier on stated that "we have been after the Trustee for nearly one

year to deliver the reports." A deposition of the clerks is planned. There are no transcripts of this hearing. (See Rule 5007, Mandatory creation and maintenance of transcripts) Subsequently, upon the curious advice of the Bank's attorney, we were directed to visit the bankruptcy court of the Eastern District at 75 Clinton St. and, examining the Docket, an entry represented that the theretofore missing reports had been filed. However, the fact remains that the **Trustee was not discharged, nor the bond cancelled until 8/13/01, over three months after the sale of May 10, 2001 date. The sale of the property was illegal because the 99-21821-575 Bankruptcy Stay was still in effect and on account of the jurisdictional deficiencies, absent observance and practice of the Local Rules in the course of Formal Abandonment of the property of the estate as I stated to the Bankruptcy Court on 7/11/01 through my friend. (See page 19, lines 14-23 of the 7/11/04 Transcript before Judge Craig. App-15). Special attention** is called to the fact that the **Court's reply** to the **claim of illegality relative to 99-21821-575** being made by Petitioner is that **"But that case had been dismissed"— a wrong answer.**

Thus, once again "dismissal" is erroneously equated to "closing", repeating the error of Confirmation Hearing of 2/11/00 held by Judge Laura Taylor Swain, wherein "dismissal" and "closing" are used interchangeably: "Property of the estate shall remain vested in the Trustee until dismissal or closing" (App-6). The fundamental argument being made here in this court as in all lower courts, beginning on 7/11/01 and in the 7/9/01 Order to Show Cause, is that such modification of the applicable statutes, rules, Bankruptcy Code is totally and categorically impermissible.

As to the part of the Confirmation Order of 2/11/00 which is permissible as a "judge made rule", in requiring the Trustee to oversee the property of the estate with special care, the Former Trustee's action was raised by the judge from a mere administrative formality to a substantive act , and I did, in fact, rely on it and was confused to find the bank foreclosed

without the Former Trustee's action. A judge made rule that enhances protection makes sense, while a judge made rule that deprives the petitioner of rights and protections granted to others cannot be permitted since that would violate the sacrosanct IV amendment to the U.S. Constitution: "equal protection under the law". I was distraught by the creditor's "Notice of Sale" by auction in early April, and on May 2, 2001, I filed, Pro Se, a Petition for Bankruptcy. On May 10, 2001 the Bank **directed its tenant, referee Horowitz to conduct a sale at auction. (See APP- 11 and APP-19 in context of Part 36 of the Chief Administrative Judge of New York State Courts re: appearances of cronyism and conflict of interest. Due diligence would have shown the Referee that the stay had not been lifted from 99-21821-575, rendering the property ineligible for sale). Also,** as Debtor, I should have been notified of the "Formal Abandonment" or intentions in this regard by the former Trustee who is mandated so to do under Bankruptcy Law as set forth in the Local Rules of Bankruptcy 2002 1, 2, 3, etc.—and not by the Referee. Had the Local Rules been followed, the Petitioner would have had recourse to the relief from the 8/25/00 Prejudice Order which allowed subsequent filing if permission were sought.

It is clear that the property of the estate of 99-21821-575 had not been formally abandoned, reports filed timely not only by the testimony of court clerks who stated to the Petitioner: "We have been after the Trustee for about one year for those reports" (We may depose that assistant); but also by the fact that Judge Craig in the 7/11/01 Hearing on 01-15887-608 (the instant and related case) would easily have Closed the case 99-21821-575. She did not because she understood that conditions for closure had not been met. Accordingly, she instead invited Petitioner to submit a "confirmable plan". The case could not properly and lawfully be closed according to law: 11 U.S.C.A, Section 541(a)(1), **Judge Milton's Order of August 13, 2001 "closing the case" was after the fact of the illegal sale, thus "locking the stable after the horse is gone" in an attempted nunc pro tunc cleanup after the Trustee.**

(See APP-v). The missing transcripts for the crucial hearings (February 11, 2000 and August 25, 2000, on Confirmation of Plan and Dismissal of Petition, respectively) cannot be accounted for in violation of my rights established by Bankruptcy Rule 5007 and 28 U.S.C.A., Rule 80 and 28 U.S.C.S. para. 753. Missing and nonexistent transcripts suggest there is no basis for Judge Swain's Orders of 2/11/00 and 8/25/00. In view of all of the facts, the Order given by Judge Milton on August 13, 2001 (closing the erstwhile open case) can only be viewed as capricious and arbitrary in its denial of a my right to Debt Relief, a fundamental right. ((See APP-4). **Both Judge Craig and Judge Milton should have vacated the 5/10/01 sale and allowed me to sell my own house at the very least as a viable, far more equitable solution to my indebtedness on the property. Because the lower courts did not see this obvious course of action as a reasonable solution. I struggle to this date in search of justice. The sale cannot be justified as legal occurring on 5/10/01, before the case was closed on 8/13/01. My ability to deliver a confirmable plan was irrelevant to defining the legality of the sale; only the Bankruptcy Code and applicable statutes can do that. Each lower court should have found for me in this way, yet they did not.**

Furthermore, it is hard to defend an auction sale for 42-51% of value when it was very easy and inexpensive to sell the property for much more. How difficult is it to sell residential real estate in NYC for 80% - 85% of appraised value? The court In Re Richardson (supra) is careful to make the point that meeting the statutory minimum for a sale under state law is not enough. While Respondent met that minimum with the auction, that is not enough under Federal Law. In addition, I never knew how many people attended the auction or how many bid on the property. This is a factor under In Re Richardson (supra) to determine whether the Former Trustee met his burden to approve only a sale that protects the Bankruptcy Estate.

Please note, it was at Former Trustee Gelberg's motion to the court in June of 2000 that the normal period for barring a new Bankruptcy Petition of 180 days was extended to one full year. This is an example of Gelberg's initiative in this case. Later, 9/26/01, before Judge Dennis Milton, Former Trustee Gelberg also takes action to oppose the motion to re-open the case, which had been open all along, all the way to 8/13/01.

Foreclosure by the former Trustee was not made pursuant to Section 548(a)(2. Petitioner appeals the Foreclosure under Section 548(a)(2)of the Bankruptcy Rules. Petitioner submits that the former Trustee failed in his duty when he did not set aside the involuntary foreclosure sale held with an open case.

The former Trustee had a duty to `avoid' sales which compromise the Bankruptcy Estate. The former Trustee had a duty to protect the interest of the Bankruptcy Estate, and that interest was impaired by a forced sale which is "too far' below market value. This sale of a $350,000--$400,000 property for $180,000 is 'too far'. The $350,,000 value derives from the Respondent when Respondent approved the mortgage with Petitioner and by MARKET VALUE OF THE ROW OF HOUSES CONTIGUOUS WITH THE SUBJECT PROPERTY, WHICH APPRAISE AT $350,000 TO $400,000 per "Comps."

While the Durett Rule is not the majority rule in most jurisdictions, it still has influence. The Durett Rule indicates that a real estate sale below 70% of appraised value is suspect; Durett v. Washington National Insurance Co., 651 F2d 201 (5th Cir. 1980). This sale was for 42 - 51%.

In the instant case, it is easy to see this sale failed the Durett Rule. $180,000 is approximately 51% of the appraised value of over $350,000. However; In Re Richardson (supra) requires that we look further.

In Re Richardson, 23 BR 434 (Bankr. D. Utah 1982) articulates

the majority rule. That Rule is more intricate, looking to a variety of factors but always giving effect to the purpose underlying Section 548 of the code to preserve the assets of the Bankruptcy Estate.

The In Re Richardson (supra) factors focus on the actual economic and market conditions at the time of the sale. It looks to interest rates, liquidity, demand for this asset, cost of alternative methods of sale, etc. The number of bidders at the auction is also important. This number is not at this point known. In the instant case, the property is a multi dwelling residential unit in a good neighborhood in Brooklyn. The real estate market (for residential properties) is booming. Demand is high. Interest rates are low. The cost of engaging a broker to improve the price gained for the asset for even as long as three months is not high. Justice demanded I be allowed to sell my own property, given the illegality of a voidable sale.

SUMMARY OF THE ARGUMENT

Errors abound in this case that entitle me as Petitioner to reversal of the fundamental adverse rulings by the lower courts, chief among which is the fact that 99-21821-575 was open during the 5/10/01 sale of the property of the estate. Even if this Court overlooks such surprises, discoveries, negligence, mistake, etc. as the referee's conflict of interest and the missing transcripts from multiple hearings; or the Court's fundamental error of equating Dismissal to Closing of the case, the fact that 99-21821-575 was open during the 5/10/01 sale is the controlling fact and a meritorious part of the record on appeal, having been invoked by this Petitioner as early as the second hearing on the instant petition 01-15887-608 on 7/11/01. Therefore, even if this Court opts not to allow the instant petition 01-15887-608—which would no longer serve a Petitioner's interests at this point anyway—still this Court must find that the 5/10/01 sale was illegal because the previous stay relative to 99-21821-575 was not lifted until 8/13/01, three full months after the sale, quite obviously,

as an accommodation and convenience to the commercial interests of the bank and bidder at auction—which interests cannot be accorded greater sanctity than a Debtor's rights under the compelling, supervening statutes, Bankruptcy Code and Constitution relative to "Equal Protection Under the Law" and right to "Debt Relief", codified by Title 11.

ARGUMENT

POINT I There is no evidentiary record to show what transpired in key hearings of 99-21821-575-- for example, to show the court's meaning and intent in key rulings and to show what actions my then attorney took in defense of the estate or what context existed for court rulings adverse to the estate. Thus, legally and effectively, the hearings are a nullity. They never happened and there was no prejudice order of 8/25/00 that can contextually be established at law. Furthermore, the 2/11/00 Confirmation Hearing, without mandatory transcription,, is void of context and meaning to support the enigmatic Order of Confirmation, erroneously equating dismissal and case closing. As previously stated, the reason I was forced to proceed Pro Se is that the Prejudice Order of 8/25/00 repelled any new professional counsel who understandably (but incorrectly) saw me as being in contempt of a Court Order. At least 8 or 9 attorneys rebuffed me outright, although I could pay them, when it was clear my attorney had abandoned me unofficially. Most truthfully, I did not know of the 1 year ban part of the order (the Prejudice Order) because attorney Jacubowitz was gone after he filed the original papers. Like the Trustee, Mr. Jacubowitz also neglected to inform the bankruptcy court that he had abandoned the case, remaining listed as my attorney till 2004.

Mr. Jacubowitz's poor performance is illustrated by the fact that as late as (1/23/04) he was still the "Attorney of record". Again, no attorney would represent me. **Even a recent attorney I hired confessed to being literally cursed at by**

Green Point bank's attorney. Therefore, he quit the case. On 5/10/01, my property was protected by 99-21821, whose stay was not lifted until 8/13/01, August 25, 2000 Prejudice Order and Dismissal, notwithstanding. As I rightly maintained in my 7/9/01 O.S.C, and Hearring on 7/11/01, the Local Rules were controlling. **But transcripts are missing. There is no evidentiary record in the mandated form of transcripts for key hearings** of (a) Confirmation Hearing of February 11, 2000 before Judge Laura Taylor Swain; (b) Hearing on Dismissal with Prejudice ("Prejudice Order) of August 25, 2000; (c) 341 Creditor Meeting in 01-15887-608 on 6/20/01 case petition where, in the instant petition, Trustee (Macco) accepted 2 payments in amount of $3600, with assurances "you're okay, just get me my documents" (ESTOPPEL) ; (d) Hearing before Judge Dennis E. Milton on 9/26/01 on Motion to Reopen 99-21821-575 wherein Former Trustee states that Final Reports have been lost, corroborating Court clerks who state his reports are missing. If they have suddenly now appeared, U.S. Trustee Manual at 4-6.1 (Final Audit) procedures by Trustees acting as successors to Trustees who have resigned, may explain the appearance of previously missing reports that prevented the closing of 99-21821-575 prior to 8/13/01. (e) Confirmation Hearing before Judge Craig with Former Trustee Macco on 7/24/01, wherein petition is dismissed only for want of a "confirmable plan" which was lacking by reason of unprofessional appearance and minor technical misunderstanding Ability to pay was never in dispute as per ©) above (ESTOPPEL), nor was the prejudice order of 8/25/00 any longer at issue, having, thusly, been modified.

This is an unacceptable amount of lost transcripts which cannot be trivialized as "harmless error" since these transcripts are essential to provide context to explain otherwise illogical events at variance with statute, rules, and the general underlying laws. Only a spirit of injustice can insist that I settle for imagination as substitute for transcripts, evidentiary record provided to others by law.

A transcript record is required of every hearing, 28 USC section 753. The consequence of their absence and remedy is that the events of the non-recorded hearing are a nullity. Bromberg v. People of Illinois, 136 III App 602, establishes the remedy for the loss of crucial transcripts. In addition, Rule 60 (a) gives the court broad discretion on the remedy for a "transcription error", even hearing by the trial court, Moore's Federal Practice, v. 18, Rule 80. Compromise of and attacks on "judicial machinery" are not to be countenanced.

Federal rule of Bankruptcy Procedure 5007 requires record of proceeding and transcript. Notwithstanding the clarity and force of that rule, along with 28 U.S.C. para. 753 and 28 U.S.C.A. para. 80, mandating maintenance of transcripts, and stating that "missing transcripts destroy evidence and prevent crucial discovery", respectively, it sometimes is argued that there is a burden of proof upon the petitioner to show that transcripts would have made a difference. Herewith, I address the additional requirement by pointing to the fact that with a transcript for Confirmation Hearing of 99-21821-575, on 2/11/00, the Judge's (Swain's) erroneous equating of "dismissal" and "closing" of the case would be underscored as erroneous. A transcript of the 8/25/00 Hearing on the Former Trustee's Motion for a Prejudice Order would reveal the softer provision of the judge for relief from the order by allowing permission to be sought. A transcript of the 6/20/01 341 Creditor's Meeting with Former Trustee Macco would reveal that he accepted two payments and assured me (estoppel) "You're okay. Just get me my documents", evidencing estoppel. A transcript of the July 24, 2001 Confirmation Hearing on 01-15887-608 before Judge Carla Craig, with Trustee Macco would further prove that Judge Craig had modified Judge Swain's Prejudice Order, and that having missed the 10-day window for appeal from the 8/25/00 Prejudice Order was thenceforth irrelevant, and moot from then on. A transcript of the 9/26/01 Hearing

before Judge Dennis Milton on the Motion to Re-open 99-21821-575 would reveal that the Former Trustee stated that the "Final Reports and other 'administrative details' must have been lost", thereby confirming court personnel who stated: "We have been after him for those reports for nearly a year!". The O.S.C. (APP-9) protests his dereliction of duty.

POINT II. The only existing transcripts are (a) for the first Hearing on the Chapter 13 petition number 01-15887-608 before Judge Craig on 6/19/01. (APP-16) At that hearing, transcripts (which have been presented to the Court of Appeals as they were presented to U.S.District Court's Judge David Trager) show that Judge Craig's order indicated that she could revisit and modify a previous Judge's Order (Judge Swain's) only if there was "error, mistake, negligence, inexcusable neglect, discovery, surprise or other reason" as per FRCP 9024, Rule 60, etc. On 7/09/01 Judge Craig signed an "Order to Show Cause why the illegal sale of 5/10/01 should not be set aside and/or vacated". That "Order To Show Cause" filing was based upon the discovery that the previous case, 99-21821-575 (Judge Swain) was still open, never having been closed as required by the Bankruptcy Code in numerous places—e.g., Bankr Rule 5009, etc. As the Bankr. Court properly noted, the Local Rules did not apply to 01-15887-608, but they certainly applied to the property of the estate in 99-21821-608 which my friend and I stated in the 7/11/01 Hearing on the OSC as the transcript shows (See APP-15). The prior stay was still in effect we said in that Hearing on Order to Show Cause why the sale should not be set aside and/or vacated because the Local Rules of Bankr. relative to 99-21821-575 were violated. They had, indeed, been violated, given the open 99-21821 case. (APP-9)

POINT III While—incorrectly, we believe—denying relief on the grounds of violated Local Rules; nonetheless, in the face of the discovery of neglect, etc. on the part of the Former

Trustee, Stuart Gelberg, and in view of the fact that I specifically sought relief on these grounds, Judge Carla E. Craig therefore discussed allowing me to present a "confirmable plan", thereby modifying Judge Swain's Prejudice Order. In fact, a "Confirmation Hearing" was held on 7/24/01, Judge Craig presiding, with Former Trustee Macco in attendance. The 7/11/01 Hearing transcript **presages** this. The Notice of Confirmation Hearing **evidences** this. The Bankr court was responding to the open 21821-575.

POINT IV: That 99-21821-575 was still open and not legally closed as required by the Code and not legally closed by the relevant statutes is shown by Judge Dennis Milton's Order of 8/13/01 closing 99-21821-575 effective June 2000—thus, he closed the case (nunc pro tunc?!). Judge Milton's order, however, gave the appearance that the court had "enforce[d] an illegal bargain" which Bankruptcy Court Eastern District Supervising Judge Conrad B. Duberstein has stated must be avoided at all cost. (See Cromer v. Orta) and (APP-4))

It is important to note that when Judge Milton closed the 21821 case nunc pro tunc, the court did not recognize the following issue : If the case had been Dismissed with Prejudice on 8/25/00, it could not possibly be Closed on 6/1/00, since dismissal is only ONE STEP of the PROCESS of Closing, which is accomplished ultimately only by virtue of Former Trustee Final Reports, discharge of the Former Trustee, cancellation of bond, etc. Furthermore, Closing cannot precede Dismissal. This was the second error of the court relative to closing and dismissal. The first was in the 2/11/00 Confirmation Order.

The case was not legally closed till 8/13/01. This shows that my contention was correct and is correct, that -- during the May 10, 2001 sale of the 831 Quincy Street property--the case was still open. Although proceeding Pro Se, this argument was articulately made in "Point I through

Point III" of my "Reply Brief" of November 12, 2001 before U.S. District Court's Judge David Trager, supported by ample citations and exhibits. In this case, as often happens, definition of dismissal versus closing is often blurred and much confusion surrounds the concept of case closing versus dismissal, we have learned in seeking an attorney. On this issue, error is a regular problem. I, (Petitioner) have been a victim of that specific, very serious error; a type of error which Judge Craig on June 19, 2001 had contemplated as the only basis for relief; an error which I had fortuitously and resourcefully found and pleaded on July 11, 2001 during the Hearing on my Order to Show Cause. (APP-9) I argued that the Former Trustee had not "Formally Abandoned the property of the estate" as is required by Local Rules of Bankruptcy 2002-1, 2, & 6007,.Bankr. Rule 5009, etc. Once I had invoked this specific section of the Local Rules, the Bankruptcy Court as well as the U.S. District Court should have vacated the illegal sale, given that all concerned saw that the previous case 99-21821-575 was not closed, and therefore still open, rendering the May 10, 2001 thus illegal. (APP-9) ALTHOUGH DISMISSED, THE 99-21821-575 STAY WAS NOT LIFTED. On close scrutiny, it is clear that Judge Craig's and the Bank's position was incorrect that Local Rules did not apply because 01-15887-608 was prohibited by the 8/25/00 prejudice order in 99-21821-575. The Local Rules did, in fact, apply because 99-21821-575 was still open, and the stay not lifted officially until 8/13/01—three months after the 5/10/01 sale. When the District Court affirmed the lower court ruling, it erred. Thus, I must respectfully submit that the lower courts all erred when they failed to find the 5/10/01 sale illegal when it was impossible for the sale to be legal so long as the 99-21821-575 case was open which it was at the time of the sale. Therefore, reversing the errors of the lower courts is consistent with the mission and mandate of the U.S. Supreme Court to supervise errant courts. Further, I want to emphasize that I did not, in fact, seek to override the prejudice order of Judge Swain of which I had no knowledge.

On 6/19/01 that Judge Craig ruled that the 01-15887-608 filing was untimely but she set forth rigorous conditions under which Judge Swain's ruling might be modified. **Those conditions were met when my July 9, 2001 Order to Show Cause revealed that I knew the Local Rules re: abandonment had been violated and that the previous case 99-21821-575 had issued an automatic Stay which was still operative (APP-9 and APP-15) because the case had not been closed even though the case was dismissed.** This was why the Trustee (Macco) had accepted payments; why Judge Craig invited a confirmable plan and why the Confirmation Hearing on 01-15887-608 was conducted on 7/24/01. (APP-1) As previously shown, I was unable to produce a professional plan, being shunned by the legal profession by reason of the Prejudice Order.

POINT V. Another compelling surprise and discovery is the Referee's "Conflict of interest". Clearly, the Referee should have turned down this and all other cases involving his landlord and neighbor (same building), Greenpoint bank, to avoid appearance of cronyism. By not turning down this case, he violated Part 36 of the New York State "Chief Judge's Rules" and the Model Code of Ethics. Suspicious behavior:

Chief Judge of New York State Supreme Court. in Part 36 of the Rules, strenuously orders the avoidance of such appearances. Also, Bergman in New York State Mortgage and Foreclosure, published by Matthew Bender, has whole chapters on this and related issues concerning "Referee's Powers" and concomitant responsibility with respect to due diligence in establishing the eligibility of property of the estate for purposes of sale to satisfy the mortgagee's lien.
(APP-13 evidences Referee's tenancy in bank's building.)
The Referee, Horowitz, is a tenant in the office building owned by the Creditor Bank, Greenpoint Bank at 356 Fulton Street , Brooklyn. Further, Greenpoint also keeps offices in this building. (I learned of this conflict of interest when my friend went to the Referee's office to serve Motion papers

for the collection of the 'surplusage' on the sale of the house.) This conflict was a surprise discovery in March –April, 2003, following upon the transference of the deed in the preceding month of February 2003, and it was literally impossible to detect any earlier on, as there was no prior opportunity for that surprising discovery. Indeed, had I not proceed pro se, I would never have learned it, since an attorney would have served the Motion papers via process server who would have found no significance in the referee's occupancy of the lienor/mortgagee's premises, in apparent conflict of interest, violating Chief Judge Rules Part 36. It shocked us, however.

The surplusage amounted only to $4,265.30 after the Referee paid himself twice. The property (831 Quincy Street, Brooklyn, N.Y.) was sold for $180,000 and the debt owed to the bank was $120,000, and the surplusage was 4,265.30. This is impossible!

There are problems here. A referee with a conflict of interest pays himself twice (See APP-19) and, overlooks a difference of $180,000 minus $120,000; files documents with County Clerk in March of 2003, whereas the sale occurred on May 10, 2001—twenty two months later! At best, there is an appearance of cronyism not balanced by anyone's efforts to 'protect' the bankruptcy estate; at worst, there is the real possibility of fraud which is in the purview of this Court, Respondent's protest re: "enlargement of issues" to the contrary, notwithstanding.

POINT VI Judge Swain Order of 8/25/00 allowed me the right to file for bankruptcy protection by requiring the permission of the court. However, the opportunity for relief from the prejudice order was denied me by reason of the Former Trustee's negligence in abandonment of the property improperly. Among other inactions, he did not give notice to me, the Petitioner, as an interested party.

POINT VII.. These issues are important and are timely

brought before the court. The major issue (e.g., openness of 99-21821-575) was raised as shown by transcript (See APP-15). In the absence of other transcripts, it cannot be shown that other key issues were not raised at the Bankr. court level, since Judge Swain's equating of "dismissing" and "closing" of a case in the 2/11/00 Confirmation Order cannot be explained otherwise, departing as it does from Bankr. Code. The issues were raised in the July 11, 2001 Hearings in my Order to Show Cause Motion dated 7/9/01 and reviewed by Judge Craig in 7/11/01 Hearing. (APP-9). In the Briefs filed in the U.S. District Court, I addressed the Former Trustee's (Gelberg's) deficiencies re: abandonment and I also addressed the issue of the amount of funds following the sale. Further, I emphasized the fact that Local Rules had been violated, Property of the Estate not having been formally, lawfully abandoned and I specifically requested the appropriate relief—which, in fact, Judge Craig allowed when she invited a "confirmable plan" which I clearly could afford as shown by my tax returns, pay stubs and rent rolls. Judge Craig allowed a Confirmation Hearing on 7/24/01 with Trustee Macco in attendance, but I lacked technical understanding, for example, relative to "percentages, revestiture,", etc. which frustrated this Trustee. (APP-1) (APP-2) (APP-3).(APP-5)

I had real trouble finding a lawyer because of the Prejudice Order. That made it difficult for me to produce a "professionally prepared" plan. It was for that reason and that reason only that my petition was dismissed at the Confirmation Hearing of July 24, 2001 pursuant to Trustee Macco's application. Such complexities clearly warrant special consideration, given the ongoing raging Bankruptcy Reform debate, the volatile economic climate and consequent need for greatest clarity on these issues as a matter of public policy, irrespective of the demographics, which I am forced to consider as an explanation for the treatment I have received in terms of the lower courts' cavalier attitude toward my objection to a sale during open case, missing transcripts, etc.

Conclusion:

The very integrity of the Bankruptcy Code is at issue, indeed, even at stake in that the magnitude and quantity of glaring errors staring even the casual observer in the face compels acknowledgement of the fact that (1) Dismissal of a Case is an entirely distinct function from the Closing of a case; (2) Missing transcripts cannot be permitted, as such absence of the evidentiary record attacks the machinery of justice itself; (3) Such gross conflicts of interest and appearance of cronyism, at the very least, on the part of the Referee as business tenant of the lienor's business premises so outrage the moral sensibilities, sharpened as they are by each and every existing ethics model—cannot be countenanced. Accordingly, the lower courts, overlooking these considerations as they evidently have, must be reversed for the restoration of the Petitioner's Constitutional Right to both due process and debt relief and for the maintenance of viable public policy, and the precious reputation of justice. If 99-21821-575 is found to have been open and the stay therefore not lifted during the sale, then the 5/10/01 sale of the property must be found to have been illegal and, as such, incurable by any manner of closing of the case after the sale, whatsoever, (nunc pro tunc, or otherwise). Failing such finding, the inescapable conclusion would have to be that an unofficial policy is in place whereby due process and Local Rules observance need not be applied as rigorously for Blacks as for Whites as I and my family and friends have feared. Despite my ordeal in the lower courts, we yet faithfully hope and pray that this Court will undo the wrongs done to me and my family in this case by exercising its supervisory function over lower courts where gross error is detectable. Had the lower courts addressed the open case issue, the missing transcripts issue alone, I would never have pursued this case this far. The failure to address them produced a deafening silence on such obviously critical issues as to become altogether suspect. The courts simply chose the path of least resistance—over my rights, to please the bank.

I brought my case from Bankruptcy Court, through U.S. District Court and most of U.S. Court of Appeals, Pro Se, without an attorney. For a brief time in the latter part of the U.S. Court of Appeals litigation, I thought I had found an attorney upon whom I could rely for oral argument and the benefits of his expertise. As an officer of the court, from a vantage point within the law, he was forced to confide that he found key issues very troubling (e.g. foreclosure sale while previous case was unclosed, missing transcripts, referee conflict of interest, Trustee negligence, etc.) and although he resisted the portrayal initially, he ultimately confessed that he found evidence of corruption, or "rottenness", to quote him. At one point fairly recently, he confided that he had been "insulted, made fun of and [literally] cursed at" by the bank through the bank's attorney. Recently, he told us that the Amicus Curiae Briief we asked him to request from Professor Robert Zinman of Saint John's University was conditionally promised to him and us on the merits of the Brief the professor asked him to send to him for review. Since the attorney we trusted has, like the rest, since disappeared, refusing all calls, emails, faxes, personal visits to his customary location, we enquired of the noted professor the status of his review only to be told that he had not spoken to my attorney at all about any Amicus Brief as my attorney had apparently falsely represented to us.

We must conclude that the bank has succeeded in intimidating him also as he cannot be found, so that I am once again sabotaged and betrayed by officialdom at the last minute. Thus the bank has succeeded in stripping me of legal expertise and vital support by unethically badgering, cursing and even threatening my legal counsel with specious, false accusations concerning his December 2003 Motion for rescheduling a January 2004 appearance in the Court of Appeals.

Consequently, I am forced to resume my litigation, Pro Se, and sacrifice to write yet another $300 money order to replace the Docket Fee U.S. Postal money order #06896376090 Mr. Nitzberg cashed himself rather than return it to me for resubmission of my corrected Brief and I pray that the Court will forgive any technical deficiencies relative to the rules which we have obeyed to the best of our untrained ability.

We desperately need this highest human Court to justify and restore our continuing faith in American Jurisprudence.

Wherefore, I petition the court for the following relief:

1) Setting aside or vacating the illegal sale at auction of 5/10/01 date, thus entitling me to compensation from Title Insurance and/or the **Respondent, Bank, whose highly trained attorneys surely knew the sale was illegal because the previous case, related case 99-21821-575 was not closed before the sale, albeit the case was dismissed, even prohibiting the instant case 01-15887-608, thereby.**
2) Permitting me to sell my own house and satisfy the debt of approximately $120,000.00
3) Reprimand and sanction both Referee and former Trustee, Gelberg, for their dereliction of duty
4) Any other relief the court deems just and proper

Dated August 15, 2004
New York, N.Y.

Respectfully,

Yvra G. Scringer

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Supreme Court U.S.
FILED
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No.

IN THE

Supreme Court of the United States

Yva G. Scringer

Petitioner

v.

Green Point Bank

Respondent

Appendix to Brief for Petitioner

On Petition for Writ of Certiorari
To The Court of Appeals for the Second Circuit

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APPENDIX OF EXHIBITS

Page in Brief

APP- i Order Confirming Plan of 99-21821-575 dated 2/11/00 erroneously equating "dismissal" and "Closing" of case Bankr Court (page 2, para. 4)

APP-ii Order of Dismissal with Prejudice dated 8/25/00 Bankr. Court

APP- iii Order Denying Debtor's Motion for Relief, 6/19/01 Relative to instant petition 01-15887-608 and Denying Debtor's Motion for Permission to Refile. 7/11/01 re: instant petition 01-15887-608 Bankr. Court

APP-v Order to Close Dismissed previous case 99-21821-575 on 8/13/01, after sale of 5/10/04 Bankr. Court

APP-vi Decision andOrder Denying Debtor's Motion in 99-21821-633 Bankr. Court. October 12, 2001

APP-ix Order denying Debtor's appeal. U.S. District Court. November 1, 2001 (erroneously written as Nov. 1, 2000)

APP-xiv Judgment by U.S. District Court, dismissing Debtor's Appeal of Judge Swain's Order in cv 01-5876 (below: 99-21821-575 Nov.6, 2001, Nov. 12, 2002

APP-xv Order by U.S. District Court denying debtor's application for a Stay pending appeal to U.S. Court of Appeals December 16, 2002, (cv 01-5876)

APP-xvi Order by Court of Appeals ,denying Petitioner's Motion for injunctive Relief pending appeal. Jan. 8, 2003. (02-5072) Hon. Feinberg, Parker, Straub

APP-xvii Order by Bankr. Court to close dismissed case 01-15887-608 Sept. 25, 2003.

APP-xviii Summary Order by U.S. Court of Appeals Denying debtor-appellant's appeal. Jan. 20, 2004

APP—xxiv Order dated March 9, 2004 by U.S. Court of Appeals denying debtor-Appellant's Motion for panel rehearing.

APP-1 Notice of Hearing on Confirmation before Judge Craig with Trustee Macco proving Judge Craig

had de facto extended the time for appeal of 99-21821 prejudice order, granting the permission provided for therein, and confirming petitioner's argument re: estoppel. The hearing occurred 7/24/01 not 10/9/01 pages:..... 8, 15, 16, 22

APP-2 Request for Transcript of 341 Creditor's meeting with Former Trustee Macco on 6/20/01 (Missing or "inaudible").....15,16

APP-3 Request for Court Transcript of 7/24/01 Confirmation Hearing before Judge Craig with Trustee Macco (Missing).....16

APP-4 Docket showing case 99-21821-575 was not closed until 8/13/01. 6,8,9,13,15,18,19

APP-5 Trustee Macco's "Application for dismissal" of 01-15887-608 which complains of technical deficiencies my client needed a professional to cure.....22

APP-6 Judge Swain Order Confirming Plan of 199-21821-575 equating case "dismissal" and case "closing", (last paragraph) an impossibility according to the Bankruptcy Code. Howbeit, Trustee is entrusted with estate.....9,11,14, 16,18,22

APP-7 Request for Court Transcript of 199-21821-575 Judge Swain Confirmation Hearing of 2/11/00. (Missing). 9,11,14, 16,18,22

APP-8 Request for Court Transcript of 9/26/01 Hearing on Motion to Re-open open 199-21821-575, Judge Milton presiding (Missing).....6,8,10,11,12,15,17

APP-9 Order to Show Cause dated July 9, 2001 very clearly stating in paragraphs #4 and #5 the requirements for legitimizing a sale of property of the estate relative to both 01-15887-608 and 99-21821-575: Namely, compliance with the Local Rules, mandating "formal

abandonment" which was not done until 8/13/01, four months after the sale was held on May 10, 2001, which was, therefore, illegal 4, 17, 20, 22

APP-10 Grievance Committee complaint against Former Trustee Gelberg re: negligent, improper and illegal

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APP-12 Unified Court System Live Database Docket Report proving Hersh Jacubowitz was Attorney of Record as late as 1/23/04 requiring him to receive all notices—e.g. Prejudice Order of 8/25/00—which he never sent to Appellant, abandoning her and her property instead, while never notifying the Bankruptcy Court of his resignation. (See APP-21).....1
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APP-16 Transcript of 6/19/01 Hearing, discussion of Bankruptcy Rule 9024, incorporating FRCP 60 Re: "relief from error, mistake, inadvertence, surprise, or other reason".....4,6,17,20
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

X

In re:

Chapter 13

Case No. 199-21821-575

Yva G. Scringer
255 Eastern Parkway, Apt F1
Brooklyn, N.Y. 11238

Debtor(s)

SS# 108-24-8902

ORDER CONFIRMING PLAN

X

The debtor's Chapter 13 Plan dated August 16, 1999 and filed with this Court on September 22, 1999 (the "Plan") having been transmitted to all creditors: and the deposit required by the Plan and 11 U.S.C. para. 1326 in the sum of $4,299.00 havihng been made to the Trustee: and

It having been determined after notice and a hearing that:

1. the Plan complied with the provisions of Chapter 13 and with other applicable provisions of this title:
2. Any fee, charge or amount required under 28 U.S.C Chapter 13 or by the plan to be paid before confirmation, has been paid.
3. The Plan has been proposed in good faith and not by any means forbidden by laws.
4. The value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be on such claim if the estate of the debtors were liquidated under 11 U.S.C. Chapter 7 on such date.

5. With respect to each allowed secured claim provided for by the plan:
   (a) the holder of such claim ahs accepted the plan.
   (b) (i) The plan provides that the holder of such claim retain the lien securing such claim and
   (b)(ii) The value, as of the effective date of the plan, of property to be distributed under theplan on account of such claim is not less than the allowed amount of such claim, or
   (c) The debtors will be able to make all payments under the plan and to comply with the plan.

IT IS ORDERED THAT:

1. The debtor's plan be and is hereby confirmed:
2. That the percentage stated in the plan for payment to unsecured creditors shall be paid to all unsecured creditors provided all Proof of Claims are filed as scheduled. If all Proofs of Claims are not filed as scheduled, the unsecured creditors shall be paid pro rata., but in no event shall they receive more than 100% of their claim as filed. Notwithstanding any language to the contrary in the debtor's plan, no class of creditors, except administrative priority, shall be paid ahead of another class of creditors, and all creditors shall be paid pro rata.
3. That immediately after the entry of this Order and every month thereafter until further Order, the debtors) shall pay, or the Trustee may, without further order of this Court, instruct the employer of the debtor, to deduct from the wages, salary or commissions of the debtor, and pay to the Trustee, Stuart P. Gelberg, at Stuart P. Gelberg, Chapter 13 Trustee, P.O. Box 29844, GPO, New York, New York 10887-9844, n the sum of $1,433.00 per month for 60 months.

4. That pursuant to 11 U.S.C. Section 1327, the debtor's real property shall remain property of the estate, tittle to which is vested in the Trustee until **dismissal or closing of the case, or until further Order of this Court.** By virtue thereof, the debtor(s) shall not sell, encumber or hypothecate said real property without prior approval of the Trustee and this Court.

Dated: Brooklyn, New York
February 11, 2000

S/_____
HON. LAURA TAYLOR SWAIN
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
Eastern District of New York
75 Clinton Street
Brooklyn, N1' 11201

IN RE:

Case No: 199 -21821-575

Yva G. Scringer

Chapter: 13

Debtor(s)

ORDER AND D NOTICE OF DISMISSAL WITH PREJUDICE

1. Upon the prior proceedings before *this* Court involving the Debtor, the Court hereby finds in the best interest of creditors and the estate this case should be dismissed with prejudice; it is therefore

ORDERED that the above-entitled case is dismissed, with prejudice, pursuant to Title 11 U.S.C. Section 10.5 and Federal Rules of Bankruptcy Procedure 1007(e), and it is also

ORDERED that pursuant to 11 U,S.C, Sections 105 and 109(g), the Debtor is hereby enjoined and prohibited froth filing any petition in bankruptcy for a period of 1 year from the date of this Order absent prior permission granted by the court pursuant to a written application gay the Debtor on notice to the case trustee and such other parties as the court may direct, and it is further

ORDERED *that any subsequent* tiling in violation of the terms of this Order (a) will be dismissed, without further notice of hearing, and (b) shall be ineffective to trigger the automatic stay provisions of Section 362(a) for a period of I

year from the date hereof, the automatic stay being deemed annulled in the case of such filing and it is further

ORDERED that the Clerk of Court shall notify the debtor, all creditors and all *parties* in interest of the order of dismissal and all its terms, and furthermore

This document serves as the official NOTICE that the above captioned case is dismissed pursuant to the terms of this order.

s/Laura Taylor Swain
United .States Bankruptcy Judge

'Dated; August 25, 2000

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
----------X

Time: 1:00 p.m.
Hearing Date: 6/19/01
-Case No.. 101-15887-608

IN RE:

ORDER DENYING DEBTOR'S MOTION FOR RELIEF FROM AUGUST 25, 2000 DISMISSAL ORDER **WITH PREJUDICE**

Yva G. Scringer,

Debtor

Chapter 13

----------X

The application of t--die Debtor, Yva G. Scringer, for an Order granting relief from ,Judge Swain's August 25, 2000 dismissal order with prejudice entered in case #199-21821-575 having been brought on by notice of motion dated May 2.5, 2001; and Teresa Gaffney of Cullen and Dykman on behalf of Green Point Bank having filed an Affidavit in Opposition to Debtor's Motion sworn to June 7, 2001; and The matter having regularly cone on for a hearing _J on June 19, 2001, at 1:00 in the afternoon of that day, arid having heard the Debtor, Yva G. Scringer and Donald Greave, in support of the application and Cullen and Dykman, by Teresa Gaffney, appearing in opposition thereto; it is

ORDERED, that the Debtor's motion for relief from ,Judge Swain's August 25, 2000 dismissal **order with** prejudice entered in case ##199-21821-575 is hereby denied as untimely

pursuant to Bankruptcy Rule 9023 and Rule 59 (b) (e) of the Federal Rules of Civil Procedure. The Court further finds there are no grounds for relief from the August 25, 2.000 dismissal order with prejudice pursuant to Bankruptcy Rule 9024 and Rule 60 of the Federal Rules of Civil Procedure.

Dated: Brooklyn, New York
July 11, 2001

s/HON. Carla E. Craig
United States Bankruk6c Judge
Mortgage 2209211
File #0065-55277

v

UNITED STATES BANKRUPTCY COURT
Eastern District of New York
75 Clinton Street
Brooklyn, NY 11201

CASE NO: 199 – 21821

IN RE:

Yva G. Scringer

SSN-TAX ID#: 108-24-8902

Debtor(s)

ORDER TO CLOSE DISMISSED CASE

The above-captioned case was dismissed by order dated June 1. 2000

IT IS ORDERED THAT:

- Stuart P. Gelberg (Trustee) is discharged as trustee of the estate of the above-named debtor(s) and the bond is cancelled.

- The Chapter 13 case of the above-named debtors) is closed.

s/ Dennis E. Milton
United States Bankruptcy Judge

Dated: August 13. 2001

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----------x

In ;re:
Case No.: 199-21821-633

Yva G. SCRINGER
Chapter 13
255 Eastern Parkway. Apt. F-1
Brooklyn, New York 11238
SS : 108-24-8902

Debtor

----------x

DECISION AND ORDER DENYING DEBTOR'S MOTION

On September 22, 1999, the debtor filed a voluntary petition for relief under Chapter 13 of Title I I of the United States Code (the "Second Case"). This is the debtor's sec6nd of three cases filed within a three year period. Although now proceeding pro se, debtor was represented by counsel in the prior proceedings of this case. On August 25, 2000, Judge Swain issued an order dismissing this case, then debtor's second Chapter 13 petition, with prejudice (the "Dismissal Order"). The Dismissal Order required the debtor to obtain prior written Court permission before re-filing a petition within the next year and that a ***re-filing*** within the proscribed period would not trigger the automatic stay. Debtor now seeks an order reopening the case pursuant to 11 United States Code §350, and thereafter modifying the dismissal order dated August 25, 2000 to a dismissal without prejudice. Attorneys for Green Point Bank ("Green Point") have filed an affidavit in opposition and the Chapter 13 Trustee has filed an

affirmation in opposition to the Debtors' application. On May 2, 2001, within the period of the one year bar of the order dismissing the Second Case, the debtor~filed her third chapter 13 petition (the "Third Case") without first obtaining the court permission *for re-filing* required under the Court's order. On May 10, 2001, creditor Green point Bank, which had previously obtained relief from the automatic stay in this case; conducted a foreclosure sale of property. Debtor contends this foreclosure sale was in violation of the automatic stay arising from her filing of the Third Case. This contention is frivolous. The August 25, 2000 Dismissal Order expressly stated that a filing in violation of the terms of the order would not trigger the automatic stay. Debtor neither sought nor obtained permission from the Court to re-file within the period of the Dismissal Order's one year bar against re-filing before filing the petition in the Third Case on May 2, 2001. Since debtor failed to comply with the terms of the Dismissal Order, the automatic stay did not attach on May 2, 2001. Accordingly, Green Point did not conduct the *May 10, 2001 foreclosure sale in violation of the automatic stay.* Debtor's *motion* appears to have been premised upon *a* Court generated Notice *of* Dis4issal dated August 1, 2001 which incorrectly reflected -a date of dismissal as June 1, 2000, ~i *as opposed to August 25, 2000, and* appeared to reflect a *dismissal without* prejudice. Debtor's claimed reliance here is misplaced or unbelievable. On June 1, 2000, the Court entered a conditional order terminating the automatic stay in the Second *Case, not* an order of dismissal. Second, the debtor filed her petition in the Third Case on May 2, 2001, three months before, issuance of the August 2; 2001 Notice. *This is at* least the debtor's third separate motion concerning the Dismissal Order. By order dated July 11, 2001, United States Bankruptcy Judge Carla E. Craig denied *two of* debtor's applications in the Third Case for relief from the Dismissal Order as *untimely. The* debtor has *filed a notice* of appeal from Judge Craig's Order. As Judge Craig found with regard to debtor's prior applications, this motion is untimely under Bankruptcy Rules 9023 and 9024 and Rules 59(b)(e) and

60 of the Federal Rules of Civil Procedure, and no grounds exist for relief from the Court's August 2S, 2000 order dismissing the debtor's Second Case with prejudice. For these and the other reasons et forth above, the debtor's application for an order reopening the case pursuant to I I United States Code §350, and thereafter modifying the Dismissal Order dated August 25, 2000 to reflect a dismissal without prejudice is denied in all respects.

IT IS SO ORDERED.

Dated: ` Brooklyn, New York
October 12, 2001

s/DENNIS E. MILTON
United States Bankruptcy Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
IN RE:

Civil Action No.
YVA G. SCRINGER (CV-01-5876(DGT)

Debtor. .

. _____ X

YVA G. SCRINGER,

Case Below Nos.

Appellant

199-21821-575
108-15887-608

-against

GREENPOINT BANK

. _____ Appellee _____ X

TRAGER, J.

Pro se Debtor Appellant, Yva G. Scringer ("Scringer"), appeals from several orders of the United States Bankruptcy Court for the Eastern District of New York in two related petitions (#199-21821-575 and #101-15887-608). Scringer appeals the Order of Dismissal With Prejudice that was signed by then Bankruptcy Judge Laura Taylor Swain on August 25, 2000 ("Judge Swain's Order"). Scringer also appeals several later orders that were signed by Bankruptcy Judge Carla E. Craig on July 11, 2001, including orders (1) denying Scringer's motion for an order to show cause to stop the sale of secured property by Appellee GreenPoint Bank ("GreenPoint"); (2)

denying Scringer's motion for relief from Judge Swain's Order; and (3) denying Scringer's motion for permission to file a new petition pursuant to Judge Swain's Order.

Background

This appeal stems from Scringer's second and third bankruptcy petitions. Scringer filed her second bankruptcy petition on September 22, 1999 under case number 199-21821-575. On August 25, 2000, Judge Swain signed an Order of Dismissal With Prejudice dismissing Scringer's petition in case number 199-21821-575 with prejudice. Judge Swain also ordered that Scringer be "prohibited from filing any petition in bankruptcy for a period of 1 year . . . absent prior permission granted by the court." Judge Swain further ordered that any later filing in violation of the order "(a) will be dismissed . . ., and (b) shall be ineffective to trigger the automatic stay provisions."

Scringer claimed that she never received Judge Swain's Order. However, according to the bankruptcy court records, copies of the order were mailed to both Scringer and her counsel - Scringer being represented by counsel at the time. *(See* Designation of Additional Items to be Included in the Record, Item 1 Ex. B.) Appellee GreenPoint holds a mortgage in foreclosure on premises owned by Scringer's at 831 Quincy Street, Brooklyn, New York (the "Quincy Street property"). On April 10, 2001, that property was sold at a foreclosure sale to Patrick Lund, who is not a party to this action. On May 2, 2001, Scringer filed a new bankruptcy petition under case number 101-15887-608 (the "608" petition). She filed the 608 petition without obtaining the prior permission required by Judge Swain's Order. Scringer also filed several motions seeking (1) relief from Judge Swain's Order; (2) court approval to file the 608 Petition; and (3) an order stopping the sale of the Quincy Street property. At two hearings (on June 19 and July 11, 2001) and in signed orders dated July 11, 2001 Judge Craig denied those motions. Judge Craig denied the motion for relief from Judge Swain's Order as untimely and based on insufficient grounds for such relief. Judge Craig

also denied Scringer's request for permission to file the 608 petition and retroactively impose a stay, because Scringer failed to present the court any documents and explain how the plan could be confirmed. Alternatively, Judge Craig held that since the Quincy Street property had already been sold, it would create prejudice to the third-party purchaser should a stay be imposed retroactively. Judge Craig then ruled that the foreclosure sale was proper and could go forward because no stay was in effect and that pursuant to Judge Swain's Order, the 608 petition did not trigger an automatic stay.

Discussion

When reviewing bankruptcy court decisions on appeal, findings of fact are accepted unless clearly erroneous, but conclusions of law are reviewed de novo. *In re Dawnwood,f Propertiesl78,* 209 F.3d 114, 116 (2d Cir. 2000); In *re Casse,* 198 F.3d 327, 332 (2d Cir. 1999). Here, the bankruptcy court's orders being considered on appeal were supported both by the facts and court records and the applicable Bankruptcy Code provisions. Scringer first appeals Judge Swain's Order dated August 25, 2000. GreenPoint argues that Scringer's appeal from Judge Swain's Order should be dismissed as untimely. Bank Bankruptcy appeals must be made within 10 days of the entry of the order under Bankruptcy

Rule 8002. This 10-day requirement is jurisdictional in nature and the failure to abide by the time requirements would deprive this Court of the jurisdiction to review Judge Swain's Order. *See In re Godr*, 282 B.R. 577, 582 (E.D.N.Y. 2002). Scringer filed her first notice of appeal on July 26, 2001, almost a full year after Judge Swain's Order.Scringer claims that she was unaware of the order and did not received a copy of the order until after the foreclosure sale. Even if the lack of notice could somehow overcome the jurisdictional nature of Rule 8002, her claim is nonetheless contradicted by the bankruptcy court records that indicate that copies of the order were mailed to both Scringer and her counsel on August 27, 2000. *See In re Robinson*, 228 B.R. 75 (E.D.N.Y. 1998) (holding that bankruptcy court record of mailing to properly addressed creditor created presumption of receipt). Scringer's appeal of Judge Swain's Order is therefore dismissed as untimely. Scringer also appeals several later orders by Judge Craig in 608 petition. Judge Craig's denied Scringer's motions for relief of Judge Swain's Order and for permission to file the 608 petition. Scinger claims that Judge Craig should have allowed Scringer to file the 608 petition because she had a confirmable plan. The record from below indicates otherwise. Even after the Quincy Street property had already sold, the record shows that Judge Craig was willing to consider granting relief of Judge Swain's order had Scringer presented evidence of a confirmable plan. However, after two hearings before Judge Craig, other than providing oral statements of a confirmable plan to the court, Scringer failed to present any actual evidence or documentation of a confirmable plan or of any change of condition that would give the bankruptcy court reason to permit the filing of a new petition.

Finally, Judge Craig denied Scringer's motion to stop the sale of the Quincy Street property. Scringer claims that this denial was in error because the property was sold without

intervention of the trustee and other requirements governing the liquidation of a bankruptcy estate under the Bankruptcy Code and Local Bankruptcy Rules. However, pursuant to Judge Swain's Order, there was no bankruptcy pending and any later filling was ineffective to trigger an automatic stay. Judge Craig correctly denied Scringer's motion to stop the sale of the Quincy Street property. Scringer's remaining arguments are either entirely without merit or are rejected for substantially the same reasons they were rejected by the bankruptcy court.

Conclusion

Accordingly, Scringer's appeal of Judge Swain's Order is dismissed, and the orders by the Bankruptcy Court denying Scringer's motions in the 608 petition are affirmed. The Clerk of the Court is directed to close the case.

Dated: Brooklyn, New York
November 1 , 2001 **(Note: Original order erroneously reads "November 1, 2000")**

SO ORDERED

s/David G. Trager
United States District Court Judge

xiv

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
IN RE:

JUDGMENT
01 - 5876 (DGT)

YVA G. SCRINGER,
Debtor.
----------X

YVA G. SCRINGER,
Appellant,

Case Below Nos.
199-21821- 575
101-15887-608

Against

GREENPOINT BANK

NOV 1 2 2002'

Appellee.

----------x TIME A.M. ..

An Order of Honorable David G. Trager, United States District Judge, having been filed on November 6, 2002, dismissing Scringer's appeal of Judge Swain's Order; and affirming the Orders by the Bankruptcy Court denying Scringer's motions in the 608 petition; it is

ORDERED and ADJUDGED that Scringer's appeal of Judge Swain's Order is dismissed; and that the Orders by the Bankruptcy Court denying Scringer's motions in the 608 petition are affirmed.

Dated: Brooklyn, New York ROBERT C. HEINEMANN
November 6, 2002 CLERK OF COURT

By JAMES GIOKAS
CHIEF DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

YVA G. SCRINGER

Debtor.

ORDER
CV 5876 (DGT)

----------x

YVA G. SCRINTGER,

Appellant
Against

Case Below Nos.
199-21821-575
101-15887-608

GREENPOINT BANK

Appellee.

----------x

TRAGER, J.

Appellant's application for a stay of the Order of this Court, dated November 1, 2002, and for an injunction against the taking of possession of the property located at 831 Quincy Street, Brooklyn, New York, during the pendency of her appeal is denied for failure to demonstrate a likelihood of success on the merits.

Dated: Brooklyn, New York
December 16, 2002

SO ORDERED:

S/ David G. Trager
United States District Judge

United States Court of Appeals
For The Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 8th Day of Jan. Two thousand three,

Present:

Hon. Wilfred Feinberg,
Hon. Fred I. Parker,
Hon. Chester J. Straub,
Circuit Judges. JAN., 8 2003

In Re: Yva Scringer,

Debtor.

02 -5072

Scringer moves for a stay and/or injunctive relief pending appeal of a district court judgment denying and dismissing her appeals from several orders of the United States Bankruptcy Court. Upon due consideration, it is ORDERED that the motion for injunctive relief is denied, because Scringer has failed to demonstrate a substantial possibility of success on appeal. See In re: Turner, 207 B.R. 373 (2d Cir. BAP 1997); LaRouche v. Kezer, 20 F.3d 68, 72 (2d Cir. 1994).

FOR THE COURT: Fernando Galindo, Acting Clerk.

s/ Lucille Carr

UNITED STATES BANKRUPTCY COURT
Eastern District of New York
75 Clinton Street
Brooklyn, NY 11201

CASE NO: 101- 15887 IN RE:

Yva G Scringer

SSN TAXID: 108-24-8902

Debtor(s)

ORDER TO CLOSE DISMISSED CASE
The above captioned case was dismissed by order dated

IT IS ORDERED TIIAT:

• Michael J. Macco (Trustee) is discharged as trustee of the estate of (lie above named debtors) and the Bond is cancelled

• The Chapter 13 case of the above named debtors) is closed.

S/ Carla Craig
United States Bankruptcy Judge

Dated: September 25, 2003

Set forth all names, including trade name, nSed l,y the

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood. Marshall United States Courthouse, Foley Square, in the City of New York, on the 20th day of January, two thousand four.

PRESENT: HON. DENNIS JACOBS,
HON. CHESTER J. STRAUB,
Circuit Judges, JAN 2 0 2004
HON. GREGORY W. CARMAN,
Judge

IN RE:

YVA G . SCRINGER
Debtor Appellant,

02-5072

GREENPOINT BANK
Creditor Appellee,

APPEARING FOR DEBTOR- APPELLANT:
ANDREW NITZBERG, Sunnyside, NY.

The Honorable Gregory W. Carman, Judge, United States Court of International Trade, sitting by designation.

APPEARING FOR CREDITOR
APPELLEE: MATTHEW G. ROSEMAN, Cullen and Dykman Bleakley Platt, LLP, Garden City, NY.

Appeal from the United States District Court for the Eastern District of New York (Trager, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be

AFFIRMED.

Debtor Appellant Yva G. Scringer ("Scringer") appeals from a judgment of the Eastern District of New York (Trager, J.) dismissing her appeal from an order by Bankruptcy Judge Swain and affirming the denial of a variety of motions submitted by Scringer to Bankruptcy 4udge Craig. Scringer argues that both of these decisions constitute clear error.

After Scringer defaulted in March 1997, Creditor

Appellee GreenPoint began foreclosure proceedings on her real property located in Brooklyn, NY. Since her default, Scringer has filed bankruptcy petitions under Chapter 13 three times in the past five years.

In February 2000, in the course of the second bankruptcy proceeding, the bankruptcy court (Swain, J.) entered an order confirming a plan under Chapter 13 and continuing the automatic stay until the dismissal of the case. Scringer failed to keep her payment schedule. In June 2000, Judge Swain issued a conditional order notifying Scringer that she had defaulted on her post petition mortgage payments to GreenPoint and that, if she did not cure, the court would lift the automatic stay and allow foreclosure proceedings to continue. On August 25, 2000, with Scringer still in default, Judge Swain dismissed the Chapter 13 case ,vith prejudice and enjoined Scringer from "filing any petition in bankruptcy for a period of 1 year from the date of this order absent prior permission granted by the court pursuant to a written application."

GreenPoint therefore proceeded with foreclosure in New

York state court. On December 14, 2000, GreenPoint obtained a judgment of foreclosure and sale from the New York Supreme Court. A foreclosure sale was held May 10, 2001 and property was sold to Patrick Lunn.

Scringer claims that she received no notice of the dismissal until Lunn appeared at her property on May 17, 2001 with a copy of Judge Swain's dismissal order. That assertion is false because, on May 2, 2001, Scringer sought to vacate this order and file a petition in a different bankruptcy court (Craig, J.). The motion to vacate Judge Swain's order was denied as untimely under Rule 9023 of the Federal Rules of Bankruptcy Procedure and Fed. R. Civ. P. 59(b), (e). Judge Craig also found that Scringer had failed to show cause for reopening the case and setting aside the completed foreclosure. Scringer appealed Judge Craig's dismissal to the district court.

Before her appeal was heard in district court, Scringer filed another motion, this time before Bankruptcy Judge "Milton, to modify Judge Swain's order, reopen the previously closed Chapter 13 case, and have the foreclosure set

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aside
as a violation of the automatic stay. Finding no grounds to reopen the previously closed Chapter 13 case, Judge Milton denied all of Scringer's motions.

Finally, in a November 6, 2002 Order, the district court dismissed Scringer' s appeal of Judge Swain's order as untimely under Rule 8002 (a) of the Federal Rules of Bankruptcy Procedure and affirmed Judge Craig's denial of Scringer's various motions to reopen her Chapter 13 case.

Under 28 U.S.C. § 158(d), this Court has jurisdiction to review both of these final decisions by the district court.

As a general matter, this Court reviews the decision by a District Court to affirm a dismissal of an action by the Bankruptcy Court "independently, accepting findings of fact unless clearly erroneous but reviewing conclusions of law de novo." In re Dawnwood Properties/78, 209 F.3d 114, 116 (2d Cir. 2000) (citations and internal quotation marks omitted).

We "will affirm a bankruptcy court's order barring subsequent filings by a particular debtor if [we] can discern neither legal nor factual error, nor abuse of discretion, in the bankruptcy court's ruling." In re Casse, 198.F.3d 327, 341 (2d Cir. 1999) (citations and internal

An appeal from the order of a bankruptcy court must be filed with a district court within ten days, unless the bankruptcy court has granted the appellant an extension. Fed. R. Bankr. P. 8002. Judge Swain's order was entered on August 25, 2000 and Scringer's first notice of appeal was untimely filed on July 26, 2001. The appeal was correctly dismissed by the district court and that portion of the district court's judgment is hereby AFFIRMED.

Since we see no error in the district: court's decision ,`Ilto dismiss"Stringer's appeal of Judge Swain's order, r,Scringer's appeal of the denial of her motions by Judge Craig is DISMISSED as moot.

We have examined Scringer's remaining claims and find them to be without merit. All pending motions are denied as moot.

FOR THE COURT:
ROSE B. MACKEchnie CLERK

Lucille Carr, Deputy Clerk

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated Tern of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of March, two thousand and four,

---

In Re: YVA G. SCRINGER,

Debtor Appellant,

MAR 9 2004

v. 02 -5072
GREEN POINT BANK,

Creditor Appellee.

It is hereby ordered that the debtor
appellant's motion for panel rehearing is DENIED.

FOR THE COURT:
Roseann . MacKechnie, Clerk

USCA Order 4

UNITED STATES BANKRUPTCY COURT
Eastern District of New York
75 Clinton Street
Brooklyn, NY 11201

IN RE:
Yva Gilkes Scringer

CASE NO: 101-15887-608

SSN/TAX ID:
108-24-8902

CHAPTER: 13

DEBTOR(s)

NOTICE OF HEARING ON CONFIRMATION

NOTICE TO DEBTOR(S), CREDITOR(S) AND INTERESTED PARTIES

Notice is hereby given that:

The above named debtor(s) have filed a voluntary petition in bankruptcy under Chapter 13 of the United States Bankruptcy Code on May 2, 2001 without the benefit of a plan.

Further notice is given that the debtor(s) filed a plan and a hearing on confirmation of said plan has been scheduled before the Honorable Carla E Craig , United States Bankruptcy Judge, on October 9, 2001 at 11:00 am at the:

United States Bankruptcy Court
75 Clinton Street
Room 451
Brooklyn, NY 11201

Objections, if any, to the confirmation must be in writing and filed with the Clerk on or before the scheduled hearing date and if no timely objections are filed, the plan may be deemed to be filed in good faith. A copy of the plan is on file with the Clerk's Office. A summary of the plan is as follows:

The plan proposes payment of: $1,808.63 monthly for a period of 60 months. PRIORITY: 11%. SECURED: 89%. UNSECURED: None.

NOTE: All information contained in the notice of the first meeting of creditors remains in effect.

Dated: May 29, 2001

For the Court, Joseph P. Hurley , Clerk of Court.

APP-2

R & R REPORTING SERVICES
COMPUTERIZED PROFESSIONAL REPORTING SERVICES
G.P.O. BOX 2738 – BROOKLYN, NY 11202

OFFICE: (718) 624-3287 FAX: (718) 624-0402

REQUEST FOR COURT TRANSCRIPT

COURTHOUSE: Bankruptcy Family Housing

Date Transcript was ordered: 7-16-01

Debtor's Name: IVA GILKES SCRINGER

Case Number:

Date Taken: 6/20/01 341 Creditors meeting

Name of the Judge: (ARCHIVE RETRIEVAL)

I hereby request & guarantee payment for said transcript as reported and transcribed by R & R Reporting Services.

A deposit of: $_____ is required before processing of this order and any balance remaining is DUE UPON RECEIPT of transcript. No transcript will be delivered without the complete payment of any balance due.

NAME OF ATTORNEY (or) ORDERING PARTY: Iva Gilkes Scringer

SIGNATURE OF SAME:

SEND MINUTES & INVOICE TO:

TELEPHONE #: _____ FAX #: _____

PLEASE SELECT IN BUSINESS DAYS. WHEN IS TRANSCRIPT NEEDED:

A) Within 3-Days = _____

B) Within 10-Days = _____

RECE DATE

RECEIVED

COMPUTERIZED PROFESSIONAL REPORTING SERVICES
G.P.O. BOX 2738 – BROOKLYN, NY 11202

OFFICE: (718) 624-3287 FAX: (718) 624-0402

APP

REQUEST FOR COURT TRANSCRIPT

COURTHOUSE: Bankruptcy Family · Housing

Date Transcript was ordered: 12/16/02

Debtor's Name: YVA G. SCRINGER

Case Number: 01-15887

Date Taken: 7/24/01 OR 7/25/01

Name of the Judge: CARLA CRAIG & TRUSTEE HACCO

I hereby request & guarantee payment for said transcript as reported and transcribed by R & R Reporting Services.

A deposit of: $_____ is required before processing of this order and any balance remaining is DUE UPON RECEIPT of transcript. No transcript will be delivered without the complete payment of any balance due.

NAME OF ATTORNEY (or) ORDERING PARTY: YVA G SCRINGER

SIGNATURE OF SAME: _____

SEND MINUTES & INVOICE TO: YVA G SCRINGER
255 EASTERN PARKWAY
BROOKLYN NY 11238

TELEPHONE #: 622-7112 FAX #: 622-7112

PLEASE SELECT IN BUSINESS DAYS, WHEN IS TRANSCRIPT NEEDED:

Within 3-Days = X

Within 10-Days = _____

Within 30-Days = _____

1-99-21821-dem Yva G Scringer
Case type: bk **Chapter:** 13 **Asset:** Yes **Vol:** v **Judge:** Dennis E. Milton
Date filed: 09/22/1999
Date terminated: 08/13/2001 **Date of last filing:** 01/30/2004

Terminated Statuses

Status	Begin Date	End Date	#	Status Set By
Awaiting Chapter 13 Plan	09/22/1999	09/22/1999	1	*Description not available: sub type = volpi*
	09/22/1999	10/15/1999	2	Chapter 13 Plan
	10/15/1999	02/11/2000		Meeting of Creditors Held
Awaiting Trustee's Report	02/11/2000	02/28/2001	9	Order Confirming Chapter 13 Plan
Awaiting Closing	02/28/2001	08/13/2001	18	Chapter 13Trustee's Final Report and Account for Dismissed Case

Illegal Sale occurs 5/10/01

13-2	Filed: 06/21/00	Motion For Costs/Attys Fees
	Docket Text: Motion By Trustee Stuart P. Gelberg To Dismiss Case , For $200.00 Costs	
0-0	Filed: 08/16/00	Hearing Held
	Docket Text: HEARING HELD RE: [13-2] Motion For $200.00 Costs by Stuart P. Gelberg, [13-1] Motion To Dismiss Case by Stuart P. Gelberg - No appearance in Opposition - Dismissed with prejudice for 1 year.	
16-1	Filed: 08/23/00	Nic of Tmp Judge Reassignment
	Docket Text: Order temporarily reassigning case to Judge Duberstein effective close of business September 8, 2000	
14-1	Filed: 08/25/00	Order Dismiss w/Prejudice(a)
	Docket Text: Order and Notice dismissing case with prejudice and prohibiting debtor from filing a petition for 1 year from the date of this order.	
15-1	Filed: 08/29/00	Cert of Mailing from BNC
	Docket Text: Certificate of Mailing from BNC. RE: [14-1] to Dismiss w/Prejudice(a) Order # of Notices: 17 Date Mailed 8/25/00	
17-1	Filed: 09/05/00	Cert of Mailing from BNC
	Docket Text: Certificate of Mailing from BNC. RE: [16-1] Temporary Judge Notice # of Notices: 12 Date Mailed 9/1/00	
18-1	Filed: 02/28/01	Chp 12/13 Tr's Rpt for Dism Cs
	Docket Text: Trustee's Final Report and Account - Case Dismissed	
0-0	Filed: 05/05/01	Transfer Case Event
	Docket Text: Pursuant to Administrative Order of the Court dated May 1, 2001; this case has been reassigned from Judge Conrad B. Duberstein to Judge Dennis E. Milton effective May 7, 2001.	
0-0	Filed: 08/02/01	Terminate Deadline
	Docket Text: Terminated Deadline(s): Proof of claim, proof of claim (Gov)	
19-1	Filed: 08/02/01	Notice of Dismissal
	Docket Text: Notice of Dismissal of Case	
20-1	Filed: 08/06/01	Cert of Mailing from BNC
	Docket Text: Certificate of Mailing from BNC. RE: [19-1] To Dismiss Notice # of Notices: 13 Date Mailed 8/4/01	

0-0	Filed: 08/13/01	Close Case - Bankruptcy
	Docket Text: Case Closed.	
21-1	Filed: 08/13/01	Order to Close Case
	Docket Text: Order to Close Dismissed Case Mailing Certificate Copy to Trustee, US Trustee.	

End of Report

PACER Service Center			
Transaction Receipt			
08/20/2001 12:19:02			
PACER Login:	p20102	Client Code:	
Description:	Case history	Case Number:	99-21821
Billable Pages:	1	Cost:	0.07

Case Not Closed Till August 13, 2001

Date	Doc #	Docket Entry
08/29/01	1	NOTICE of docketing bankruptcy record on appeal. (wv) [Entry date 09/05/01]
08/29/01	–	Magistrate Gold has been selected by random selection to handle any matters that may be referred in this case. (wv) [Entry date 09/05/01]
10/09/01	4	Brief of Appellee Greenpoint Bank. (dg) [Entry date 10/16/01]
10/10/01	2	ORDER, schedule approved. (signed by Judge David G. Trager , on 10.05.01) Copies mailed by Chambers. See letter dtd 09.28.01 from C. Gayden Wren to Judge Trager. (sg) [Entry date 10/10/01]
10/16/01	3	LETTER dated 9/28/01 from Yva G. Scringer to Judge Trager in the process of coordinating with Creditor's attorney (Cullen & Dykman) and Mr. Michael Macco, Trustee relative to open dates 10/26/01, 11/6/01 or 11/30/01. (Please find a copy of the BRIEF attached) (ld) [Entry date 10/16/01]
10/30/01	5	ORDER, application granted re: additional time to complete petitioner's "reply brief" in response to creditor's (Mr. Wren's) atty's brief. (signed by Judge David G. Trager , on 10.29.01) Copies mailed by Chambers. See letter dtd 10.20.01 from Yva G. Scringer to Judge Trager. (sg) [Entry date 10/30/01]
[END OF DOCKET: 1:01cv05876]		

A1

Documents for 99-21821

Click on description text to see docket text for that document and related transactions.

Doc #	Filed	Description	Filer	Terminated
0-0	09/22/99	First Meeting		
1-1	09/22/99	Voluntary Petition		
2-1	09/22/99	Chapter 13 Plan		
3-1	09/28/99	Cert Mlg Summary Chl3 Plan		
4-1	09/28/99	Cert Mlg 341 Meeting Ntc		
0-0	10/07/99	Hearing Schd/Cntd/Rschd		
5-1	10/07/99	Notice of Appearance & Request	Cullen & Dykman	
6-1	10/07/99	Motion	Stuart P. Gelberg	11/03/99
6-2	10/07/99	Motion	Stuart P. Gelberg	11/03/99
0-0	10/15/99	First Meeting Held		
7-1	10/28/99	Affidavit Changed Circumstance	Yva G Scringer	
0-0	11/03/99	Hearing Held		
0-0	11/03/99	Endorsed Order		
8-1	12/22/99	Notice of Appearance & Request	Michael D Hess	
0-0	01/19/00	Hearing Held		
9-1	02/11/00	Order Confirming Chp 13 Plan		
0-0	03/20/00	Filing Fee Paid in Full		
0-0	03/20/00	Hearing Schd/Cntd/Rschd		
10-1	03/20/00	Motion for Relief From Stay	GreenPoint Bank	06/01/00
0-0	04/06/00	Hearing Held		
11-1	06/01/00	Order		
12-1	06/12/00	Affid of Compliance/Noncompli	GreenPoint Bank	
0-0	06/21/00	Hearing Schd/Cntd/Rschd		
13-1	06/21/00	Motion	Stuart P. Gelberg	08/13/01
13-2	06/21/00	Motion	Stuart P. Gelberg	08/13/01
0-0	08/16/00	Hearing Held		
16-1	08/23/00	Ntc of Tmp Judge Reassignment		
14-1	08/25/00	Order Dismiss w/Prejudice(a)		
15-1	08/29/00	Cert of Mailing from BNC		
17-1	09/05/00	Cert of Mailing from BNC		
18-1	02/28/01	Chp 12/13 Tr's Rpt for Dism Cs		
0-0	05/05/01	Transfer Case Event		
19-1	08/02/01	Notice of Dismissal		
20-1	08/06/01	Cert of Mailing from BNC		

Case open during Sale

0-0	Filed: 11/03/99	Endorsed Order
	Docket Text: Endorsement Order Withdrawing [6-1] (Motion To Dismiss Case by Stuart P. Gelberg) Withdrawing [6-2] (Motion For $200.00 Costs by Stuart P. Gelberg) (Endorsed On 11/3/99 calendar)	
8-1	Filed: 12/22/99	Notice of Appearance & Request
	Docket Text: Notice of Appearance And Request For Service Of Notice By Michael D Hess for Creditor Corporation Counsel of the City of NY.	
0-0	Filed: 01/19/00	Hearing Held
	Docket Text: HEARING HELD RE: [2-1] Chapter 13 Plan - Confirmed - Settle Order.	
9-1	Filed: 02/11/00	Order Confirming Chp 13 Plan
	Docket Text: Order Confirming Chapter 13 Plan dated 8/16/99.	
0-0	Filed: 03/20/00	Hearing Schd/Cntd/Rschd
	Docket Text: Hearing Re: [10-1] Motion For Relief From Stay by GreenPoint Bank schd For 11:30 4/6/00 at Rm. 901, Brooklyn	
0-0	Filed: 03/20/00	Filing Fee Paid in Full
	Docket Text: Filing Fee Paid in Full RE: [10-1] Motion For Relief From Stay by GreenPoint Bank (Filing Fee $ 75.00 Receipt # 181236)	
10-1	Filed: 03/20/00	Motion for Relief From Stay For Relief From Stay
	Docket Text: Motion By Creditor GreenPoint Bank For Relief From Stay .	
0-0	Filed: 04/06/00	Hearing Held
	Docket Text: HEARING HELD RE: [10-1] Motion For Relief From Stay by GreenPoint Bank - Marked off-Settle Conditional Order.	
11-1	Filed: 06/01/00	Order
	Docket Text: Conditional Order Granting [10-1] Motion For Relief From Stay by GreenPoint Bank, upon default Greenpoint Bank shall file an Affidaivt of Non - Compliance and shall begin its foreclosure action. (CR)	
12-1	Filed: 06/12/00	Affid of Compliance/Noncompli
	Docket Text: Affidavit By Creditor GreenPoint Bank c/ Non-Compliance Re: [11-1] Order	
0-0	Filed: 06/21/00	Hearing Schd/Cntd/Rschd
	Docket Text: Hearing Re: [13-1] Motion To Dismiss Case by Stuart P. Gelberg schd For 10:00 8/16/00 at Rm. 901, Brooklyn, [13-2] Motion For $200.00 Costs by Stuart P. Gelberg schd For 10:00 8/16/00 at Rm. 901, Brooklyn	

BEST AVAILABLE COPY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmm 1634

In re:

Chapter 13

YVA GILKES SCRINGER

Case No. 101-15887-608

Debtor(s)

APPLICATION

TO: THE HONORABLE CARLA E. CRAIG, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee in the above captioned estate, respectfully represents as follows:

1. The debtor(s) filed a petition under the provisions of 11 U.S.C. Chapter 13 on May 2, 2001, and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.

2. The debtor(s) Chapter 13 Plan has not yet been confirmed by Order of this Court.

3. The debtor(s) plan provides that the debtor(s) pay to the Trustee the sum of $1,808.65 a month, for a period of sixty (60) months.

4. The debtor(s) have failed to provide your Trustee with documents requested at the §341 meeting of creditors, namely a lease agreement or tenant affidavit stating dollar rental amount, an amended Statement of Financial Affairs, and utility bills for the month of May 2001, including heat, telephone, and cable.

5. The debtor(s) have also failed to provide your Trustee with an amended plan to state the revesting of real property upon completion of plan payments or dismissal, to state the exact percentage to be paid to unsecured non-priority creditors, to pledge all tax refunds over the life of the plan to your Trustee for distribution to creditors, to change the length of the plan to thirty-six (36) months, to give a breakdown of who is paying current mortgage payments, and to file a plan that pays all filed claims

6. This is a material default and is prejudicial to the rights of the creditors of the debtor.

WHEREFORE, your Trustee prays for an order pursuant to the provisions of 11 U.S.C. §1307 dismissing this case, and such other and further relief as this Court deems just and proper.

Dated: Huntington, New York
July 11, 2001

S/

Michael J. Macco, Chapter 13 Trustee
164 Main Street
Huntington, New York 11743
(631) 549-7900

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tsg 6986

In re:

Chapter 13

Yva G. Springer
255 Eastern Parkway, Apt F1
Brooklyn, NY 11238

Case No. 199-21821-375

Debtor(s)

SS# 108-24-8902

ORDER CONFIRMING PLAN

The debtor's Chapter 13 Plan dated August 16, 1999 and filed with this Court on September 22, 1999 (the "Plan") having been transmitted to all creditors; and the deposit required by the Plan and 11 U.S.C. § 1326 in the sum of $ 4,299.00 having been made to the Trustee; and

It having been determined after notice and a hearing that:

1. The Plan complied with the provisions of Chapter 13 and with other applicable provisions of this title;

2. Any fee, charge, or amount required under 28 U.S.C. Chapter 13 or by the plan to be paid before confirmation, has been paid;

3. The plan has been proposed in good faith and not by any means forbidden by law;

4. The value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be on such claim if the estate of the debtors were liquidated under 11 U.S.C. Chapter 7 on such date;

5. With respect to each allowed secured claim provided for by the plan:

(A) The holder of such claim has accepted the plan;

(B)(i) The plan provides that the holder of such claim retain the lien securing such claim; and

(B)(ii) The value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) The debtor(s) surrender(s) the property securing such claim to such holder; and

6. The debtor(s) will be able to make all payments under the plan and to comply with the plan;

IT IS ORDERED, that:

1. The debtor's plan be and is hereby confirmed.

2. That the percentage stated in the plan for payments to unsecured creditors shall be paid to all unsecured creditors provided all Proof of Claims are filed as scheduled. If all Proofs of Claims are not filed as scheduled, the unsecured creditors shall be paid pro rata, but in no event shall they receive more than 100% of their claim as filed. Notwithstanding any language to the contrary in the debtor's plan, no class of creditors except administrative priority, shall be paid ahead of another class of creditors, and all creditors shall be paid pro rata.

3. That immediately after the entry of this Order and every month thereafter until further Order, the debtor(s) shall pay, or the Trustee may, without further order of this Court instruct the employer of the debtor, to deduct from the wages, salary or commissions of the debtor, and pay to the Trustee, STUART P. GELBERG, at Stuart P. Gelberg, Chapter 13 Trustee, P.O. Box 29844, GPO, New York, New York 10087-9844, in the sum of $1,433.00 per month for 60 months.

4. That pursuant to 11 U.S.C. Section 1327, the debtor's real property shall remain property of the estate, title to which is vested in the Trustee until dismissal or closing of the case, or until further Order of this Court. By virtue thereof, the debtor(s) shall not sell, encumber or hypothecate said real property without prior approval of the Trustee and this Court.

Dated: Brooklyn, New York
February 11, 2000

HON. LAURA TAYLOR SWAIN
U.S. BANKRUPTCY JUDGE

APP-

R & R REPORTING SERVICES
COMPUTERIZED PROFESSIONAL REPORTING SERVICES
G.P.O. BOX 2738 – BROOKLYN, NY 11202

OFFICE: (718) 624-3289 FAX: (718) 624-0402

REQUEST FOR COURT TRANSCRIPT

COURTHOUSE: Bankruptcy Family Housing

Date Transcript was ordered: 12-19-02

Debtor's Name: IVA GILKES SCRINGER

Case Number: 199-21821-575

Date Taken: 2/11/00

Name of the Judge: Hon. S. Mair, Hearing on Confirmation Mission

I hereby request & guarantee payment for said transcript as reported and transcribed by R & R Reporting Services.

A deposit of: $_____ is required before processing of this order and any balance remaining is DUE UPON RECEIPT of transcript. No transcript will be delivered without the complete payment of any balance due.

NAME OF ATTORNEY (or) ORDERING PARTY: Iva Gilkes Scringer

SIGNATURE OF SAME: Iva G Gilkes Scringer

SEND MINUTES & INVOICE TO: Scringer
For Court of Appeals
For 2nd Circuit

TELEPHONE #: 718 783-3899 FAX #: 718 622-7112

PLEASE SELECT IN BUSINESS DAYS. WHEN IS TRANSCRIPT NEEDED:

Within 3-Days = _____

Within 10-Days = _____

Within 30-Days = _____

R & R REPORTING SERVICES
COMPUTERIZED PROFESSIONAL REPORTING SERVICES
G.P.O. BOX 2738 – BROOKLYN, NY 11202

OFFICE: (718) 624-3287 FAX: (718) 624-0402

REQUEST FOR COURT TRANSCRIPT

COURTHOUSE: Bankruptcy Family Housing

Date Transcript was ordered: 6-19-01

Debtor's Name: YVA SCRINGER

Case Number: 21621-575 Prejudice Hearing

Date Taken: 8-25-00 missing

Name of the Judge: SWAIN

I hereby request & guarantee payment for said transcript as reported and transcribed by R & R Reporting Services.

A deposit of: $_____ is required before processing of this order and any balance remaining is DUE UPON RECEIPT of transcript. No transcript will be delivered without the complete payment of any balance due.

NAME OF ATTORNEY
(or) ORDERING PARTY: _____

SIGNATURE OF SAME: _____

SEND MINUTES & INVOICE TO: _____

YVA SCRINGER
255 EASTERN PKWY F-1
BROOKLYN, NY

TELEPHONE #: 718-240-5453 FAX #: _____

R & R Reporting Services
Court, EBT's, Depositions & Hearings
Computer Aided Transcription
SHEILA H
71 Clinton Street - 7th Floor
Brooklyn, N.Y. 11224
O.P.O. Box 2738
Brooklyn, N.Y. 112

PLEASE SELECT IN BUSINESS DAYS, WHEN IS TRANSCRIPT NEEDED:

A) Within 3-Days = _____
B) Within 10-Days = X CLIENT IS AWARE OF REPORTER OUT ON MEDICAL LEAVE UNTIL
C) Within 30-Days = _____ JULY 9, 2001.
6/19/01

COMPUTERIZED PROFESSIONAL REPORTING SERVICES
G.P.O. BOX 2738 - BROOKLYN, NY 11202

APP-8

OFFICE: (718) 624-3287 FAX: (718) 624-0402

REQUEST FOR COURT TRANSCRIPT

COURTHOUSE: Bankruptcy Family Housing

Date Transcript was ordered: 12/16/02

Debtor's Name: YVA G SCRINGER

Case Number: 199-21821-633

Date Taken: 9/26/2001

Name of the Judge: DENNIS E MILTON

I hereby request & guarantee payment for said transcript as reported and transcribed by R & R Reporting Services.

A deposit of: $_____ is required before processing of this order and any balance remaining is DUE UPON RECEIPT of transcript. No transcript will be delivered without the complete payment of any balance due.

NAME OF ATTORNEY (or) ORDERING PARTY: _____

SIGNATURE OF SAME: _____

SEND MINUTES & INVOICE TO: YVA G SCRINGER
255 EASTERN PARKWAY
BROOKLYN NY 11238

TELEPHONE #: 622-7112 FAX #: 622-7112

PLEASE SELECT IN BUSINESS DAYS, WHEN IS TRANSCRIPT NEEDED:

Within 3-Days = X

Within 10-Days = _____

Within 30-Days = _____

UNITED STATES BANKRUPTCY COURT
Eastern District of New York

----------x

In re:

Yva G. Scringer

Debtor

Case No. 01-15887-608
Chapter 13

SSN/TAX ID: 108-24-8902

----------x

RECEIVED
JUL 9 2001
U.S. BANKRUPTCY COURT, E.D.N.Y.
JUDGE CRAIG CHAMBERS

PETITION FOR ORDER TO SHOW CAUSE

Petition for Order to Show Cause why the illegal foreclosure sale of debtor's property (831 Quincy Street, Brooklyn, N.Y. 11221) by Green Point Savings Bank, the Creditor, should not be set aside and/or vacated altogether for the following reasons:

1. The sale took place on 5/10/01 in direct violation of the United States Bankruptcy Act under the United States Bankruptcy Court Local Rules for the Eastern District of New York which requires in rule 2001-1 that there be "Notice of presentment", including (a) through (d).

2. The sale took place on 5/10/01 in direct violation of the United States Bankruptcy Act under the United States Bankruptcy Court Local Rules for the Eastern District of New York which requires in rule 6004-1 that "Collection and Liquidation of the Estate" and the "Sale of property, appraisals and auctions" thereunder shall be carried out pursuant to all of the rules set forth in this PART VI., including but not limited to (b) Notice of Sale of Estate Property", (b)(vi) The date by which objections to the sale must be filed with the court, (c)(i) Date of completion of the sale, (c)(ii) The name or names of the persons to whom the property is sold, (c)(iii) The price received for each separate item or lot sold.

3. The sale took place on 5/10/01 in direct violation of the United States Bankruptcy Act under the United States Bankruptcy Court Local Rules for the Eastern District of New York which states in rule 6005-1 that (a) No debtor or Case Trustee shall retain the services of an auctioneer without prior order of the Court.

4. The sale took place on 5/10/01 in direct violation of the United States Bankruptcy Act under the United States Bankruptcy Court Local Rules for the Eastern District of New York which states that a "CLERK'S CERTIFICATE AS TO NO OBJECTION TO PROPOSED SALE OF PROPERTY" must be filed, but in fact no such certificate was filed nor was there any notice of proposed sale of the property by the trustee either in the instant case 01-15887-608, or in the previous case 99-21821-575 wherein an Order with prejudice was issued to lift the automatic stay for one year.

5. Consequently, the creditor, Green Point Savings Bank, in conducting the improper and illegal auction of 5/10/01 with respect to the subject property of the Debtor, has : Usurped the authority of the case trustees in at least one of the related cases and possibly both; usurped the authority of the Court itself, acting in its stead; violated the local rules of the Bankruptcy Court of the Eastern District and thereby violated the law in its conduct, rendering the subject sale illegal, and invalid,

UNITED STATES BANKRUPTCY COURT
Eastern District of New York

In re:

Yva G. Scringer

Debtor

Case No. 01-15887-608
Chapter 13

SSN/TAX ID: 108-24-8902

6. In the pursuit of the illegal sale, violations of the Right To Financial Privacy Act occurred in that the Order issued by Judge Swain on August 23 or 25, 2000 were obtained, delivered by unknown person(s) and ultimately used by the bidder at auction to harass, manipulate, intimidate the debtor, the owner of the subject property at 831 Quincy St. and through deception, representing that the August 2000 Order constituted legal authority in the hands of the bidder at auction to cause local police to exert police authority upon the owner through her representative and upon the tenants of the building.

For these reasons, the illegal sale conducted by the creditor through auctioneer(s) it had no authority to retain, having by passed local rules of the Bankruptcy Court, must be set aside and/or vacated altogether in consideration of the rules, and citations, annexed.

July 9, 2001
Date

Yva G Scringer PRO SE
Debtor Signature

Telephones: 718 622-7112 Home
718 783-3899 Messages
718 240-5453 Office

Hearing scheduled
for 7-11-01
at 10:00 a.m.
in Courtroom 451,
75 Clinton St. Debtor
is directed to serve papers
on Cullen & Dykman, attorneys for
Greenpoint Bank, 100 Quentin Roosevelt Blvd.,
Garden City, NY 11530 by overnight mail to
be received on 7-10-01. Carla E. Craig, USBJ
7-9-01

GRIEVANCE COMMITTEE FOR THE
2ND & 11TH JUDICIAL DISTRICTS
DIANA MAXFIELD KEARSE, CHIEF COUNSEL
RENAISSANCE PLAZA – SUITE 2400
335 ADAMS STREET
BROOKLYN, NEW YORK 11201-3745
(718) 923-6300

This office investigates allegations of misconduct of attorneys with offices in BROOKLYN, QUEENS and STATEN ISLAND ONLY.

If the attorney in question has his office in MANHATTAN or the BRONX, please send this form to:
THOMAS J. CAHILL, ESQ., CHIEF COUNSEL
DEPARTMENTAL DISCIPLINARY COMMITTEE
FIRST JUDICIAL DEPARTMENT
61 BROADWAY – 2ND FLOOR
NEW YORK, NEW YORK 10006
(212) 401-0800

If the attorney in question has his office in either WESTCHESTER, NASSAU or SUFFOLK COUNTY, please send this form to:

SUFFOLK & NASSAU

ROBERT P. GUIDO, CHIEF COUNSEL
GRIEVANCE COMMITTEE FOR THE
10TH JUDICIAL DEPARTMENT
6900 JERICHO TURNPIKE – SUITE LL102
SYOSSET, NEW YORK 11791
(516) 364-7344

WESTCHESTER COUNTY

GARY L. CASELLA, CHIEF COUNSEL
GRIEVANCE COMMITTEE FOR THE
9TH JUDICIAL DISTRICT
399 KNOLLWOOD ROAD – SUITE 200
WHITE PLAINS, NEW YORK 10603
(914) 949-4540

DATE: Ocotber 17, 2002

COMPLAINANT:

YOUR NAME: (MR.) ( ) (MS.) ( ) MRS. SCRINGER (LAST) YVA (FIRST) G. (INITIAL)

ADDRESS: 255 Eastern Parkway (STREET)

Brooklyn (CITY) (COUNTY) N.Y. (STATE) 11238 (ZIP CODE)

TELEPHONE NUMBER (HOME) 718 783-3899 (OFFICE) 718 240-5453

ATTORNEY IN QUESTION:

NAME: GELBERG (LAST) STUART (FIRST) P (INITIAL)

ADDRESS: 600 OLD COUNTRYT ROAD (STREET)

GARDEN CITY, (CITY) (COUNTY) N.Y. (STATE) 11530 (ZIP CODE)

TELEPHONE NUMBER 516 228-4280

CONTACT WITH OTHER AGENCIES:
Have you contacted any other agency, such as the Bar Association or District Attorney's Office concerning this matter? _____

PLEASE USE BLACK INK PENS

CONTINUE HERE:

In the month of may, 2001, attorney Stuart P. Gelberg, Trustee of the Bankruptcy Court at 75 Clinton Street, Brooklyn, N.Y. , in violation of the Bankruptcy Code under the Bankruptcy Laws of the United States of America, and in violation of the Local Rules of Bankruptcy (e.g., 2002-1,2,3,etc.) and in violation of the "Memorandum of Understanding between the Executive Office for United States Trustees and the Administrative Office of the United States Courts regarding case closing and post confirmation Chapter 11 monitoring", abandoned my property at 831 Quincy Street, Brooklyn, N.Y. 11221-3611 in an illegal, "informal manner"—instead of "formally abandoning" it as mandated by law. By his own admission in court, he filed no mandated reports, characterizing that mandated obligation as a "mere administrative detail." This violation of law and my Constitutional Rights to "Debt Relief" resulted in the illegal sale of my property at illegal auction and at least $50,000.00 (Fifty Thousand dollars) was unaccounted for (and still may be!) as reported to me by the "buyer" of my property. Attorney Gelberg dismisses his failure to file lawful reports and failure to follow the Local Rules of Bankruptcy as a "mere administrative detail". However, the "Memorandum of Understanding" referenced above reveals his dishonesty and violation of my rights. More details are provided in the attached Brief filed with the U.S. District Court at 225 Cadman Plaza, Brooklyn, N.Y. on November 12, 2001. Mr. Gelberg's contention that I, the undersigned complainant, had no right to file a Bankruptcy Petition (a matter which is presently awaiting decision on appeal before Judge David G. Trager in U.S. District Court)—is irrelevant to his obligations to follow the Local Rules of Bankruptcy or at the very least, follow the rules guiding "normal" sales at auction outside of New York State Supreme Court; rules which require that the title holder (myself) be notified of pending sale and require that I be paid the "surplusage" which in this case I am told amounted to at least $50,000.

GRIEVANCE COMMITTEE FOR THE
2ND & 11TH JUDICIAL DISTRICTS
DIANA MAXFIELD KEARSE, CHIEF COUNSEL
RENAISSANCE PLAZA - SUITE 2400
335 ADAMS STREET
BROOKLYN, NEW YORK 11201-3745
(718) 923-6300

This office investigates allegations of misconduct of attorneys with offices in BROOKLYN, QUEENS and STATEN ISLAND ONLY.

If the attorney in question has his office in MANHATTAN or the BRONX, please send this form to:
THOMAS J. CAHILL, ESQ., CHIEF COUNSEL
DEPARTMENTAL DISCIPLINARY COMMITTEE
FIRST JUDICIAL DEPARTMENT
61 BROADWAY - 2ND FLOOR
NEW YORK, NEW YORK 10006
(212) 401-0800

If the attorney in question has his office in either WESTCHESTER, NASSAU or SUFFOLK COUNTY, please send this form to:

SUFFOLK & NASSAU
ROBERT P. GUIDO, CHIEF COUNSEL
GRIEVANCE COMMITTEE FOR THE
10TH JUDICIAL DEPARTMENT
6900 JERICHO TURNPIKE - SUITE LL102
SYOSSET, NEW YORK 11791
(516) 364-7344

WESTCHESTER COUNTY
GARY L. CASELLA, CHIEF COUNSEL
GRIEVANCE COMMITTEE FOR THE
9TH JUDICIAL DISTRICT
399 KNOLLWOOD ROAD - SUITE 200
WHITE PLAINS, NEW YORK 10603
(914) 949-4540

DATE: JULY 31, 2001

COMPLAINANT:

YOUR NAME: (MR.)( ) (MS.)( ) SCRINGER (LAST) YVA (FIRST) G. (INITIAL)

ADDRESS: 255 EASTERN PARKWAY (STREET)

BROOKLYN, (CITY) (COUNTY) N.Y. (STATE) 11238 (ZIP CODE)

TELEPHONE NUMBER (HOME) 718 622-7112 (OFFICE) 718 240-5453

ATTORNEY IN QUESTION:

NAME: HOROWITZ (LAST) JOSHUA (FIRST) (INITIAL)

ADDRESS: 356 FULTON STREET (STREET)

BROOKLYN, (CITY) (COUNTY) N.Y. (STATE) 11201 (ZIP CODE)

TELEPHONE NUMBER: 718 237 0303

CONTACT WITH OTHER AGENCIES:

Have you contacted any other agency, such as the Bar Association or District Attorney's Office concerning this matter? YES

If so, state the name of the agency: OFFICE OF THE CHIEF ADMINISTRATIVE JUDGE
UNIFIED COURT SYSTEM, 2ND JUDICIAL DISTRICT
SUPEME COURT OF THE STATE OF NEW YORK

What action was taken by the agency: NONE YET. RECENTLY REPORTED PROBLEM.

COURT ACTION TAKEN BY YOU AGAINST THE ATTORNEY:

Have you taken any civil or criminal action against the attorney? NO

If so, please name the court and provide the index number: _____

What action was taken by the Court? _____

FACTS: State from the beginning and be sure to tell why you went to the attorney, when you had contact with the attorney, what happened each time you contacted the attorney and what it was that the attorney did wrong. Please send this office COPIES of all papers that you received from the attorney along with this form.

PLEASE USE BLACK INK PENS

CONTINUE HERE

ON May 10, 2001, ATTORNEY JOSHUA HOROWITZ, ESQ., ACTING IN THE CAPACITY OF REFEREE IN A FORECLOSURE SALE OF REAL PROPERTY AT AUCTION, CONDUCTED A SALE OF MY PROPERTY AT 831 QUINCY STREET, BROOKLYN, N.Y. IT WAS ONLY THROUGH A SERIES OF DEVELOPMENTS OVER THE LAST TWO YEARS, WHEREIN I CONTESTED THE BANK'S RIGHT TO SELL THE PROPERTY WHICH HAD BEEN UNDER PROTECTION OF A CHAPTER 13 BANKRUPTCY CASE 199-28871-575 IN THE BANKRUPTCY COURT OF THE EASTERN DISTRICT AT 75 CLINTON STREET, BROOKLYN, N.Y.—THAT I LEARNED OF A GROSS CONFLICT OF INTEREST ON THE PART OF THE REFEREE WITH REGARD TO THE FORECLOSING BANK. IN THE PROCESS OF TRYING TO COLLECT THE SURPLUSAGE FROM THE SALE OF MY HOUSE, I DISCOVERED THAT THE REFEREE HAS A BUSINESS RELATIONSHIP WITH THE BANK IN THAT HE IS A BUSINESS TENANT IN THE BANK'S OFFICE BUILDING. IT WAS ONLY BECAUSE, ACTING PRO SE, I HAD TO SERVE HIM MOTION PAPERS AS A PARTY AT INTEREST IN THE PROPERTY SALE, THAT I LEARNED THIS FACT WHICH WOULD NOT HAVE BEEN REVEALED WERE I REPRESENTED BY AN ATTORNEY WHO WOULD HAVE USED A PROCESS SERVER TO WHOM HIS ADDRESS, COINCIDING WITH THE BANK'S ADDRESS, WOULD HAVE HAD NO MEANING. WHEREAS I HAD ALL ALONG THOUGHT THAT IT WAS THE TRUSTEE WHO WAS SINGULARLY AT FAULT IN NEGLIGENTLY ABANDONING THE PROPERTY OF THE ESTATE IN VIOLATION OF THE COURT'S ORDER OF CONFIRMATION, I HAVE RECENTLY COME TO THE REALIZATION THAT THE REFEREE'S NEGLIGENCE IN FAILING TO REQUIRE THE FINAL REPORTS FROM THE TRUSTEE, THE DISCHARGE OF THE TRUSTEE AND THE CLOSING OF THE CASE, AS THE LAWFUL CONDITIONS FOR THE CONDUCT OF A FORECLOSURE SALE, IS EXPLAINABLE BY HIS CONFLICT OF INTEREST AS A TENANT IN THE BANK, THE FORECLOSING PARTY INITIATING THE SALE. I HAVE RECENTLY LEARNED THAT THE REFEREE'S CONDUCT IS SUBSTANTIVELY AND SERIOUSLY AT ODDS WITH THE SPIRIT AND LETTER OF PART 36 OF THE RULES OF THE COURT WHICH APPOINTS REFEREES. THE STRANGELY EVASIVE BEHAVIOR THAT WAS ENCOUNTERED UPON CALLING THE REFEREE'S OFFICE—E.G., REPEATED DENIALS THAT THERE WAS ANY REFEREE IN THAT OFFICE, DESPITE THE FACT THAT SURPLUSAGE WAS AT THAT VERY TIME DEPOSITED—AFTER INORDINTE DELAYS!— IN THE COUNTY CLERK'S OFFICE; REFUSAL TO SIGN PROOF OF DELIVERY OF THE MOTION PAPERS SERVED UPON HIM RELATIVE TO THE SURPLUSAGE—ALL SERVE TO RE-ENFORCE THE IMPRESSION THAT THE REFEREE HAS ILLEGALLY ACTED AGAINST ME IN VIOLATION OF PART 36 OF THE RULES OF THE COURT. ADDITIONALLY, RESEARCHING THE REFEREE'S ROLE IN BERGMAN OF NEW YORK, PUBLISHED BY MATTHEW BENDER REVEALS POSSIBLE PROBLEMS WITH THE REFEREE'S COMPUTATION, PAYING HIMSELF TWICE, ALSO IN APPARENT CONTRAVENTION OF THE DEPUTY ADMINISTRATIVE JUDGE, HONORABLE ANN PFAU'S MARCH 12, 2003 MEMORANDUM POSTED ON THE PUBLIC AREA BULLETIN BOARD OF THE EX PARTE MOTIONS ROOM (267) OF SUPREME COURT AT 360 ADAMS ST. WHICH WE NOTICED WHEN APPLYING FOR THE SURPLUSAGE AND DELIVERING PAPERS TO THE ROOM. THE MEMO SAYS REFEREE'S DON'T HAVE TO REPORT AND CERTIFY, PURSUANT TO PART 36, IF THEIR COMPENSATION DOESN'T EXCEED $550. HOWEVER, ON THE "TERMS OF SALE" HE PAYS HIMSELF $500 AND THEN ANOTHER $500 WHICH IS PENCILED IN. THE PICTURE HAS BEEN CLEARING UP.

NOTE: UNSIGNED COMPLAINTS WILL NOT BE PROCESSED

PLEASE SIGN HERE

State of New York
Grievance Committee
for the
Second and Eleventh Judicial Districts

Renaissance Plaza
335 Adams Street - Suite 2400
Brooklyn, New York 11201-3745
(718) 923-6300

LAWRENCE F. DiGIOVANNA
Chairman

DIANA MAXFIELD KEARSE
Chief Counsel

ROBERT J. SALTZMAN
Deputy Counsel

MARK F. DEWAN
DIANA J. SZOCHET
MELISSA D. BRODER
SUSAN KORENBERG
COLETTE M. LANDERS
SHARON F. GURSEN
MICHELE MARTINO
SUSAN B. MASTER
Assistant Counsel

August 18, 2003

PERSONAL & CONFIDENTIAL

Yva G. Scringer
255 Eastern Parkway
Brooklyn, New York 11238

Re: Joshua B. Horowitz, Esq.
Docket No.: K-1794-03

Dear Ms. Scringer:

We have received your complaint form pertaining to the above-named attorney. Thank you for taking the time to communicate with us.

The Grievance Committee's function is to investigate and prosecute acts of professional misconduct committed by attorneys. The Committee has jurisdiction over attorneys whose offices are in Brooklyn, Queens or Staten Island.

When a complaint is received, we review it to determine if it involves behavior which could constitute professional misconduct by the attorney. An attorney may be found guilty of professional misconduct if it can be proven that an ethical rule or law was violated. If there is a sufficient basis to conduct an investigation, the Committee will do so. Otherwise, no action will be taken.

After reviewing your complaint, it has been determined that it does not state a complaint of professional misconduct. Therefore, although we appreciate your efforts, we are unable to open this matter for investigation.

Very truly yours,

Diana Maxfield Kearse
Chief Counsel

DMK/pr

T-451 P.002/002 F-108

JUN-07-2004 10:22AM F-108

U.S. Bankruptcy Court
Eastern District of New York (Brooklyn)
Bankruptcy Petition #: 1-99-21821-dem

Date Filed: 09/22/1999
Date Terminated: 08/13/2001

Assigned to: Dennis E. Milton
Chapter 13
Voluntary
Asset

represented by Hersh Jakubowitz
42-34 162nd Street
Flushing, NY 11358
(718) 445-1436
Email: HJakubowit@aol.com

Yva G Scringer
255 Eastern Parkway
Brooklyn, NY 11238
(718)
SSN: xxx-xx-8902
Debtor

Stuart P. Gelberg
600 Old Country Road
Ste 410
Garden City, NY 11530
718-343-2228
Trustee

Filing Date	#	Docket Text
09/22/1999	1	Voluntary Petition all schedules and statements. Proof of Claim [gov] Deadline: 3/20/00 [Filing Fee $ 160.00 Receipt # 171755] [frmr] (Entered: 09/22/1999)
09/22/1999	2	Chapter 13 Plan dated 8/16/99. [frmr] (Entered: 09/24/1999)
09/22/1999		First Meeting of Creditors Scheduled For 10:30 10/15/99 At Rm. 308, Brooklyn Confirmation Hearing Set For 10:00 1/19/00 At Rm. 901, Brooklyn Objections to Confirmation Due: 1/19/00 Last Day to File Proofs Of Claim: 1/13/00 [frmr] (Entered: 09/24/1999)
09/28/1999	3	Certificate of Mailing from BNC, RE: Summary Of Chapter 13 Plan. Number of Notices: 9. Date Mailed: 09/26/99. [frmr] (Entered: 09/28/1999)
09/28/1999	4	Certificate of Mailing from BNC, RE: First Meeting. Number of Notices: 9. Date Mailed: 09/26/99. [frmr] (Entered: 09/28/1999)
10/07/1999	5	Notice of Appearance And Request For Service Of Notice By Cullen & Dykman for Creditor GreenPoint Bank. [nds] (Entered: 10/07/1999)
10/07/1999	6	Motion By Trustee Stuart P. Gelberg To Dismiss Case , For $200.00 Costs [frmr] (Entered: 10/07/1999)
10/07/1999		Hearing Re: [6-1] Motion To Dismiss Case by Stuart P. Gelberg schd For 10:00 11/3/99 at Rm. 901, Brooklyn, [6-2]

1/23/04 2:2

FEB-24-2003 13:51 P.03

MORTGAGE NO : GF-1305211 February 8, 2001 03:26:18 PM

Referee's Deed in Foreclosure

Made on 2/13/01

Between JOSHUA HOROWITZ, ESQ.
356 FULTON STREET
BROOKLYN NY 11201

duly appointed in the action hereinafter mentioned Grantor

and ~~ANTHONY GILL~~ Blue Chip Realty DK, LLC Company

Grantee

Witnesseth, that the Grantor, the Referee appointed in an action between

GreenPoint Bank
Plaintiff,

and

EVA FORINGER
ALFA HIXON
GERALD HIXON
REGINALD PALMER
THELMA PALMER
MARTIN PALMER
Defendants,

foreclosing a mortgage recorded on 5/11/94 in the office of the register of the County of KINGS, in liber/reel 3256 at page 575, pursuant to a judgment entered in the Supreme Court of the State of New York, County of KINGS on 12/14/00 and in consideration of $160,000.00 Dollars paid by the Grantee, ANTHONY GILL that being the highest sum bid at the sale under said judgment does hereby grant and convey unto the Grantee, all the right, title and interest of the defendants in and to the premises described in exhibit A attached hereto, otherwise known as:

831 QUINCY STREET
BROOKLYN NY 11221
Sect: (08 Block: 01626 Lot(s): 0063

Premises hereinafter described are the said intended to be the same as described in Liber 89 Page 773

To have and to hold the premises herein granted unto the Grantee, their heirs, devisees and assigns forever.

Whenever the text hereof requires, the singular number as used herein shall include the plural and all genders.

In Witness Whereof, the Grantor has hereunto set his hand and seal, the date first above written.

L.S.
JOSHUA HOROWITZ, ESQ., As Referee

Referee = Tenant - Bank's

Mortgage Specialist
356 Fulton Street
Brooklyn, NY 11201

(718) 706-1927 Office
(800) 290-1195 Beeper
(516) 457-4379 Cell

GreenPoint Mortgag

Senior Business Banking Specialist

356 Fulton Street
Brooklyn, NY 11201
Tel. 718.802.0630
Fax 718.802.0063

1425 Rockaway Parkway
Brooklyn, NY 11236
Tel. 718.649.7701
Fax 718.272.3622

GreenPoint Bank

Referee = Tenant
in Bank's Bldg

APP-14

UNITED STATES BANKRUPTCY COURT
Eastern District of New York
75 Clinton Street
Brooklyn, NY 11201

CASE NO: 199 - 21821

IN RE:

Yva G Scringer

SSN-TAXID: 108-24-8902

Debtor(s)

ORDER TO CLOSE DISMISSED CASE

The above-captioned case was dismissed by order dated June 1, 2000

IT IS ORDERED THAT:

- Stuart P. Gelberg (Trustee) is discharged as trustee of the estate of the above-named debtor(s) and the bond is cancelled.
- The Chapter 13 case of the above-named debtor(s) is closed.

s/ Dennis E. Milton

United States Bankruptcy Judge

Dated: August 13, 2001

Set forth all names, including trade names, used by the debtor(s) within the last 6 years (FRBP 1005). For joint debtors set forth both social security numbers:

ma: Both lower Courts Failed to Look at This Order
Lower Courts - U.S. District and U.S. Court of Appeals
This Order Proving 199-21821
Was Open when Illegal Foreclosure
Sale at Auction was Conducted

APP-15

COPY

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

----------X

In the Matter

of

Chapter 13
101-15887-608

YVA GILKES SCRINGER,

Debtor.

----------X

UNITED STATES COURTHOUSE
BROOKLYN, NEW YORK

July 11, 2001
10:00 a.m.

B E F O R E:

HONORABLE CARLA E. CRAIG
Bankruptcy Judge

A P P E A R A N C E S:

CULLEN AND DYKMAN
Attorneys for Greenpoint Bank
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
BY: TERESA A. GAFFNEY, ESQ.

YVA SCRINGER
Debtor

DONALD GREAVES
Friend of the Debtor

me about that?

MR. GREAVES: Well, our understanding of what's in the rules, the local rules, is that there are procedures to be followed. She obviously was not notified.

THE COURT: What are you talking about? What procedures?

MR. GREAVES: In the sale of the property, in the notice, things of that nature.

THE COURT: If you believe that the foreclosure sale was not conducted in accordance with state law, then you would have to go to state court to address that. But I don't see how there's been any violation of any bankruptcy law or rule by the conduct of this foreclosure sale in a situation where there was no automatic stay in effect.

MR. GREAVES: While there was no stay in effect for this case, there was a bankruptcy case prior where that stay was issued. Somewhere in between here--

THE COURT: But that case had been dismissed.

Dismissed ≠ closed Court Error

MR. GREAVES: Isn't she still entitled to a hearing on the sale and a notice?

THE COURT: That's a question not in this court.

MR. GREAVES: The state court, you're saying, is the--

THE COURT: The procedures for conduct of a foreclosure sale are governed by state law, and that is something that would be administered by the court in which the foreclosure action is pending.

So I'm going to deny that motion.

MR. GREAVES: That was the petition for the order?

THE COURT: The order to show cause to set aside the illegal foreclosure sale of the debtor's property.

MR. GREAVES: That was a petition, wasn't that, on an order to show cause?

THE COURT: I have here on the docket, order to show cause to set aside the illegal foreclosure sale of debtor's property. And I haven't heard or seen anything that explains to me why there was any illegality or problem with the foreclosure sale.

MR. GREAVES: She had received no notice. That's what the thought was. She had not

I, VARDA SHARVIT, HEREBY CERTIFY THAT:
(A) THE FOREGOING PAGES REPRESENT AN ACCURATE AND COMPLETE TRANSCRIPTION OF (THE ENTIRE) OR (A PORTION OF THE) RECORD OF THE PROCEEDING BEFORE THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK, JUDGE CRAIG PRESIDING, IN THE MATTER OF YVA GILKES SCRINGER AND (B) THESE PAGES CONSTITUTE (THE ORIGINAL TRANSCRIPT) OR (A TRUE COPY OF THE TRANSCRIPT) OF THE PROCEEDING.

VARDA SHARVIT
BANKRUPTCY COURT REPORTER

COPY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
----------X

IN THE MATTER -of-

Chapter 13
Case No.
101-15887-608

YVA GILKES SCRINGER,

Debtor.

----------X

United States Courthouse
Brooklyn, New York

June 19, 2001
2:00 p.m.

B E F O R E:

HONORABLE CARLA E. CRAIG
Bankruptcy Judge

A P P E A R A N C E S:

CULLEN and DYKMAN
Attorneys for Greenpoint
100 Quentin Roosevelt Boulevard
Garden City, New York 11530

BY: TERESA A. GAFFNEY, ESQ.

A L S O P R E S E N T

Yva Gilkes Scringer

Donald Greaves

R & R Reporting Services
75 Clinton Street
Brooklyn, New York 11201
(718) 624-3287

COURTROOM DEPUTY: Number 64 on the calendar, Yva Gilkes Scringer, a motion to allow the case to continue due to the fact that Judge Swain's order prohibiting filing for one year was unknown to debtor.

MR. GREAVES: My name is Donald Greaves. I am here on behalf of Ms. Scringer. I helped her to the point where she met with an attorney, who asked her to seek an adjournment for the purposes of his clearing his schedule so he can represent her in this matter.

THE COURT: If I am understanding the facts correctly, Judge Swain entered an order prohibiting Ms. Scringer from filing any bankruptcy petition for a period of one year. It was entered in August 2000; is that correct?

During this period of time, the property has been sold.

MS. GAFFNEY: The property was sold on May 10.

The debtor filed within the prescribed period. We went through with our sale based on Judge Swain's order. The third party bought the property, and has expended closing costs, and

Greenpoint is ready to close.

THE COURT: You are asking me to adjourn your motion?

MR. GREAVES: She has had no opportunity to be represented here. She is seeking this one-time adjournment. She has equity in this property. She has been keeping up on her payments. She has other creditors, who have accepted the filing. She has a issue with the prejudice order, which was made on the basis of an serial filing, when, in fact, it was a conversion. She has ordered the transcript from that August 2000 hearing.

Her attorney who will be representing her says she has a confirmable plan. He has asked for a one-time adjournment combining this motion with a later motion, so he can come into Court.

THE COURT: Ms. Gaffney, what is your objection to this?

MS. GAFFNEY: The debtor tendered the first payment, which I returned to her by letter dated May 17.

They have a motion returnable July 11. She served that motion on May 21. It has been a

month she became aware we were not accepting this filing petition, so she had a month to get an attorney.

THE COURT: What is the problem with adjourning this? There is no stay in place.

MS. GAFFNEY: The third party purchaser felt uncomfortable closing. They want to have this motion resolved.

THE COURT: Do you have a closing schedule?

MS. GAFFNEY: The closing is supposed to be on or about June 21. We are ready to close. We figured because the motion was today, we would allow them that time.

THE COURT: What is before me today?

MR. GREAVES: It is to allow the petition on the grounds of whether she has filed a subsequent motion where there is meritoriousness. She has a confirmable plan in the estimation of her prospect of an attorney. She has filed these in bits and pieces because she is pro se. She does not have the expertise.

THE COURT: So you are asking for a relief from Judge Swain's order dated

BEST AVAILABLE COPY

August 25, 2000; is that right?

MS. GAFFNEY: Judge Swain's order said, if the debtor wanted relief, she would need to get prior permission before filing.

MR. GREAVES: That is not we are asking for today.

THE COURT: What are you asking?

MR. GREAVES: I am not an attorney. I am not her attorney. All we are asking for is an adjournment.

THE COURT: The difficulty is the delay has prejudiced the secured creditor here, because they are not going to be able to close on this transaction until I resolve this.

MR. GREAVES: But the consideration of her equity in this property. This lady has a saving, an investment in her retirement property.

At least to have the underlying issues examined competently by someone in authority with respect to an attorney who could address these issues. I am not that person. I merely come to help another human being.

MS. GAFFNEY: I believe he is a tenant on the first floor apartment.

THE COURT: I appreciate that.

The sale took place in May. That is almost six weeks ago. There has been enough time for you to get an attorney.

MR. GREAVES: That has not been the case. I know she has been interviewing attorneys. She has now found an attorney who, in fact, has a serious interest in this case in representing her on the issues.

He has put his name freely to her pro se paperwork to say, yes, you can go ahead, and say I will take this case in the event there is this one-time adjournment on the basis for which I can clear my schedule to look at some of the issues the Court would want to look at seriously at her equity in the property. He says, she qualifies for consideration in that regard.

MS. GAFFNEY: Your Honor, this is the third filing.

MS. SCRINGER: This is a conversion.

MS. GAFFNEY: I have the prior case numbers. Case number 198-18602 filed June 1998. It was a Chapter 7. The stay was terminated, because there was no equity in the property.

There was second filing in September 1999, which Judge Swain entered the order terminating it with prejudice. She was represented by an attorney in that case. She alleged she never received the notice of that order, but the file shows the Clerk of the Court served her with that order and her attorney. They never appealed that order. There is a affidavit of service in the Court's file.

THE COURT: I am going to deny the debtor's motion for an extension. I am also denying her motion for relief from Judge Swain's order, to the extent the debtor's motion for relief from Judge Swain's order was based upon Bankruptcy Rule 9023. It is untimely. It has to be denied for that reason.

Bankruptcy Rule 9023 incorporates by reference Federal Rules Civil Procedure 59(b)(e) requires any motion made pursuant thereto has to be filed no later than 10 days after the entry of the judgment or order as to the relief is sought.

MR. GREAVES: Meaning the 2000 order?

THE COURT: Yes.

Judge Swain's order dismissing the

case with prejudice was dated August 25, 2000. The debtor's motion for reconsideration was not filed until quite recently, well after this 10-day period. Under Bankruptcy Rule 9006(b)(2), this 10-day period cannot be enlarged by the Court.

The only remaining question is whether the debtor has stated grounds for relief from Judge Swain's August 25, 2000 order pursuant to Bankruptcy Rule 9024, which incorporates by reference Federal Rules Civil Procedure Rule 60. That provides a relevant part as follows:

On motion upon such terms are adjust the Court may relieve a party or a parties legal representative for a final judgment order proceeding for the following reasons:

A mistake or inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of a judgment. The only possible subdivisions of this Rule that could apply here would be Subdivisions 1 and 6.

The Second Circuit has addressed these standards for granting relief under Rule 60(b) in the case of Nemaizer versus Baker 793 Fed (Second Circuit 1986.)

Properly applied Rule 60 (b) strikes a balance between serving the ends of justice and preserving the finality of judgments. In other words, she broadly construed to do some substantial justice. Yet, the final judgments should not be lightly reopened. The Rule may not be used as a substitute for a timely appeal, since Rule 60(b) allows extraordinary judicial relief. It is only upon a showing of an acceptance of circumstances. A motion seeking such relief is addressed in the soundest discretion of the Court.

The District Court with an upheld review, limited to determine whether that discretion has been abused.

The debtor's arguments as to why she believes she should have relief from this order are not well developed. It appears she takes the position there was inadequate representation of counsel, and possible errors by the Court. This Court has to determine whether legal error by the Court or error by counsel in representing the debtor constitutes a mistake within the meaning of Federal Rules Civil Procedure 60(b)(1) so as to afford a basis for relief from the order.

The Second Circuit has addressed the implacability of Rule 60(b)(1) to correct legal error. International Controls Corp. versus Vesco 566 Fed 665 (Second Circuit 1977) the Court of Appeals held that while Rule 60 (b)(1) referenced a mistake has been held to include mistakes by the Court. A motion for such relief may not be made after the time to appeal has elapsed at least if the mistake alleged has a substitutive legal nature.

This Rule is consistent with the principle enunciated in the Nemaizer that Federal Rules Civil Procedure 60(b) may not be used for the substitute of a timely appeal.

For that reason, in the argument the debtor may make based on an alleged error by Judge Swain is untimely and must be denied. To the extent the debtor argues there was a mistake, inadvertence, surprise, or excusable neglect justifies relief under Rule 60(b) because of counsel's error in failing to advocate adequately on her behalf before Judge Swain, the motion also must be denied.

It is well established the error by

counsel does not provide the basis for relief under Federal Rules Civil Procedure 60(b)(1). The Second Circuit addressed this issue in Nemaizer, "near dissatisfaction and hindsight with choices made by counsel is not grounds for finding a mistake inadvertence, surprise, or excusable neglect necessary to justify Rule 60(b)(1) relief."

More practically, for our purposes, an attorney's failure to carefully evaluate the rule of consequences of a chosen course of action provides no basis for relief from the judgment, Nemaizer 793 Fed. Second 62, nor does Rule 60(b)(6), which is the only other conceivable basis for this motion providing the grounds for modifying Judge Swain's August 25, 2000 order.

It is well established that relief may be sought under Rule 60(b)(6) only when the motion is not premised on one of the grounds enumerated from clauses (b)(1) through (b)(5). Liljeberg versus Health Services Acquisition Corp. 486 Fed. U.S. 837863 (1998.) Accord United States versus Erdoss 440 Fed. Second 1221,1223 (Second Circuit 1971,) "it is our belief that Rule 60 (b) (1) and Rule 60(b)(6) are mutually exclusive so that any

conduct which generally falls cannot stand on the ladder."

Therefore, to the extent the debtor seeks relief under 60(b)(6) based upon an alleged error of the Court the motion must be denied, because such a motion could have been made under Federal Rules Civil Procedure 60(b)(1) if it was filed in the 10 days of the entry of the lift stay order. To the extent relief was sought under Rule 60(b)(6) because inadequate representation by counsel must also be denied.

As the Nemaizer Court has pointed out, the Second Circuit is consistently indicated a reluctance to accord relief under Rule 60(b)(6) even when counsel's conduct shows gross negligence.

The Supreme Court holding in Pioneer Investment Services Company versus Brunswick Associate Limited Partnership 507 U.S. 380, 396 (1993,) "clients must be held liable for the acts and omissions of their attorneys reinforces this conclusion, 507 U.S. 380, 397."

For those reasons, the debtor's motion for relief from Jude Swain's order is denied.

I will direct Greenpoint Bank to

settle an order consistent with this opinion read into the record.

MS. GAFFNEY: Thank you, your Honor.

(Whereupon the proceeding was concluded.)

I, ELISA A. MEOLA, HEREBY CERTIFY THAT: (A) THE FOREGOING PAGES REPRESENT AN ACCURATE AND COMPLETE TRANSCRIPTION OF THE ENTIRE RECORD OF THE PROCEEDING BEFORE THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK, JUDGE CRAIG PRESIDING, IN THE MATTER OF YVA GILKES SCRINGER AND THESE PAGES CONSTITUTE THE ORIGINAL TRANSCRIPT OF THE PROCEEDING.

MAKING PHOTOCOPIES OF THIS TRANSCRIPT FOR USE BY ANY OTHER FIRM IS STRICTLY PROHIBITED UNLESS PERMISSION IN WRITING IS GIVEN.

THIS TRANSCRIPT CERTIFICATION IS VOIDED IF THE SIGNATURE IS NOT ORIGINALLY SIGNED BY THE COURT REPORTER WHO REPORTED THIS MATTER.

Elisa Meola

ELISA A. MEOLA

COURT REPORTER

FORM C

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT

1. SEE NOTICE ON REVERSE. 2. PLEASE TYPE OR PRINT. 3. ATTACH ADDITIONAL PAGES IF NECESSARY.

Title of Case:	District or Agency	Judge
Yva G. Scringer, Plaintiff V Green Point Bank, Defendant	U.S. District Court	David G. Trager
	Date Filed in District Court or Agency 12/9/02	District Court Docket No. 01-5876
	Date Notice of Appeal Filed December 6, 2002	Is this a Cross Appeal? o Yes ✓ No

Attorney(s) for	Name	Address	Telephone
Appellant o Plaintiff o Defendant	Yva G. Scringer 718 622-7112	Pro Se 255 Eastern Parkway, #F1 Brooklyn,NY 11238	718 622-7112
Appellee o Plaintiff o Defendant	Green Point Bank Garden City,	c/o Cullen & Dykman 100 Quentin Roosevelt Blvd, New York 11130-4850	516 357-3700

Has Transcript Been Prepared?	Approx. Number of Transcript Pages	Number of Exhibits	Has this matter been before this Court previously? o Yes ✓ No If Yes, state Case Name: —— —— Docket No.: Citation:
2 hearings of 6 Total 25 approx		25	

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

This action was an appeal from orders of Bankruptcy Court of Eastern District of New York denying Plaintiff's instant petition 01-5876 (above)/01-15887-608 (below) That this Court should grant permission to re-open 199-21821-575 which was open during the illegal sale or grant permission to file the instant petition now on appeal, 01-15887-608

ISSUES PROPOSED TO BE RAISED ON APPEAL:

Errors in law and provisions for relief pursuant to FRCP 9024, Rule 60; Unenforceability of Illegal Contracts; Trustee Misconduct; Requirements of Local Rules of Bankruptcy; Case closing requirements; Case re-opening rules; effects of bankruptcy petition confirmation; violations of 28 U.S.C.A. Rule 80 and 28 U.S.C.S. Para. 753; violations of U.S. Trustee guidelines set forth in "Accounting Office Memorandum of Understanding", etc.; judge-made rule;jurisdictional deficiency, 11 U.S.C.S. para. 350 Non zealous, incompetent legal representation

A. JURISDICTION

1. Federal
o U.S. a party
o Federal question (U.S. not a party)
o Diversity
o Other (specify):

2. Appellate
o Final Decision below
o Interlocutory decision appealable as of right
o Order Certified by District Judge (specify): Judgement Affirmed Lower Court
o Other (specify):

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM. FORM C

FORM D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TRANSCRIPT INFORMATION
CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court with in ten days after filing notice of appeal.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
YVA D. SCRINGER, PLAINTIFF-APPELLANT V. GREEN POINT, DEFENDANT-APPELLEE	U.S. DISTRICT COURT	01 CV 5876
	JUDGE: DAVID G. TRAGER	APPELLANT: YVA G. SCRINGER
	COURT REPORTER: SHEILA	COUNSEL FOR APPELLANT: YVA G. SCRINGER, PRO SE

TRANSCRIPT ORDER - Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES).

2/11/00 CONFIRMATION HEARING-JUDGE SWAIN (199-21821-575)
8/25/00 ORDER OF DISMISSAL, JUDGE SWAIN (199-21821-575)
6/10/01 MEETING OF CREDITORS, TRUSTEE MACCO (01-15887-608)
7/24-25/01 CONFIRMATION HEARING JUDGE CRAIG (01-15887-608)
9/26/01 HEARING ON MOTION TO REOPEN, JUDGE MILTON (199-21821-575)

2/11/00 CONFIRMATION HEARING-JUDGE SWAIN
8/25/00 ORDER OF DISMISSAL, JUDGE SWAIN
6/10/01 MEETING OF CREDITORS, TRUSTEE MACCD
7/24-25/01 CONFIRMATION HEARING JUDGE CRAIG
9/26/01 HEARING ON MOTION TO REOPEN, JUDGE MILTON

I am ordering a transcript.
I am not ordering a transcript
Reason:

- ☐ Daily copy is available
- ☑ Other - Attach explanation

METHOD OF PAYMENT ☐ Funds ☐ CJA Voucher (CJA 21)

- ☑ PREPARE TRANSCRIPT OR PRE-TRIAL PROCEEDINGS
- ☐ PREPARE TRANSCRIPT OF TRIAL
- ☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
- ☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

YVA G. SCRINGER
255 EASTERN PARKWAY, #F1
BROOKLYN, N.Y. 11238
718 622-7112, & 718 783-3899

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

COUNSEL'S SIGNATURE	DATE
Yva G Scringer - Pro Se	12/18/02

COURT REPORTER ACKNOWLEDGMENT (To be completed by court reporter. Return one copy to: Clerk of Court, U.S. Court of Appeals, Second Circuit)

DATE ORDER RECEIVED	ESTIMATED COMPLETION DATE	ESTIMATED NUMBER OF PAGES
SIGNATURE OF COURT REPORTER		DATE

U.S. COURT OF APPEALS
CLERK'S OFFICE

2002 DEC 18 PM 1:08

RECEIVED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------x

GREENPOINT BANK

Plaintiff,

-against-

YVA SCRINGER
ALFA NIXON
GERALD NIXON
REGINALD PALMER
THELMA PALMER
MARTIN PALMER

Defendants.

----------x

REFEREE'S REPORT OF SALE

INDEX NO. 12443/99

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

I, JOSHUA HOROWITZ, ESQ., the Referee appointed by and named in the judgment of foreclosure and sale, made at the Supreme court of the State of New York, held in the County of KINGS and entered on 12/14/00 in the Office of the register of the County of KINGS to make the sale of the mortgaged lands and premises described in said judgment, respectfully report as follows:

FIRST: That I caused the due notice of the sale of said lands and premises on 05/10/01 at the foot of the KINGS County Courthouse steps at 360 ADAMS STREET, BROOKLYN, N.Y. 11201, to be given and published according to law and rules and practice of this Court, as will fully appear by the affidavits annexed hereto.

SECOND: That at the time and place for which said sale was noticed as aforesaid, I attended in person, and in accordance with such notice, offered the said mortgaged lands and premises for sale to the highest bidder upon the Terms of Sale hereto annexed and publicly read by me previous to the bidding and sold said premises to: BLUE CHIP REALTY COMPANY LLC, who thereafter assigned his interest to ANTHONY GILL for the sum of $180,000.00 that being the highest sum bid. ~~A copy of said is annexed hereto~~ who thereafter

Therefore, I then and there required and received from the purchaser $18,000.00 cash/certified funds as a down payment which I forthwith deposited to the credit of this action in ATLANTIC LIBERTY.

THIRD: That I received from the purchaser the balance of the purchase money in the sum of $162,000.00.

* assigned his ~~bid~~ interest to Anthony Gill, Patric Lunn and Clarence Ellis who thereafter assign their bid to Blue Chip Realty Co. LLC. ~~Copies of~~ The aforementioned assignments of bid are annexed

JAN-19-2004 16:58 F-217 P.001/004 T-488

FOURTH: That plaintiff is being credited $120,678.78 as was reported by the Referee's Oath and Report dated 07/27/00:

1.	Interest at contract rates from computation date 07/15/00 to judgment entry 12/14/00 (149 days)	$5,930.84
2.	Interest at 9% from judgment entry 12/14/00 to closing date 02/12/03 (778 days)	23,472.02
3.	Costs as taxed in the action	1,135.00
4.	Interest on costs at 9%	220.76
5.	Allowance in addition to taxable costs:	300.00
6.	Interest on allowance at 9%	58.35

FIFTH: That Plaintiff's attorney paid to P.G. Legal Advertising the sum of $1,784.00 or advertising Notice of Sale in the ***JEWISH PRESS*** (Receipted bill and affidavits of publication annexed).

SIXTH: That I paid to myself the sum of FIVE HUNDRED DOLLARS AND 00/100-----($500.00)-----as and for the fees and commissions to which I am entitled upon said sale.

SEVENTH: Plaintiff paid all taxes which were liens through the day of sale.

EIGHTH: That Plaintiff made advances since date of computation in the sum of $ 6,980.68.

NINTH: That Plaintiff paid legal fees to Plaintiff's attorneys in connection with this foreclosure action in the sum of $3,205.00.

Annexed hereto and made part of this report is a statement showing the several items aforesaid, and the mode of computation of such surplus.

All of which is respectfully submitted.

Dated: Feb 12, 2003

JOSHUA HOROWITZ, ESQ., REFEREE

JAN-10-2004 10:58AM P.002/004 F-217

Reference may submit Twice To circum-
vent Part 36 Rules of
Ny State Supreme Court

STATEMENT

1.	Amount due on bond and mortgage, as per judgment	$120,678.78
2.	Interest at contract rates from 07/15/00 to 12/14/00	5,930.84
3.	Interest at 9% from 12/14/00 to to closing date 02/12/03	23,472.02
4.	Costs per judgment	1,135.00
5.	Interest on costs	220.76
6.	Statutory allowance	300.00
7.	Interest on allowance	58.35
8.	Advertising notice of sale paid	1,784.00
9.	Referee's fee	500.00
10.	Advance since computation by bank	6,980.68
11.	Legal fee	3,205.00
	Sub Total due Plaintiff	$164,265.43
12.	Open ~~taxes~~ water/sewer payable at closing	11,469.2
13.	closing fee for Referee	500.
	Total Due Plaintiff	164,265.
	Amount Bid	$180,000.00
	Surplus	$ 3,765.

Dated: February 12, 2003

JOSHUA HORONITZ, ESQ., REFEREE

JAN-10-2004 10:39AM FROM- T-488 P.003/004 F-217

STATE OF NEW YORK
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT
NORTH SHORE ATRIUM II
6900 JERICHO TURNPIKE
SUITE 102LL
SYOSSET, N.Y. 11791
(516) 364-7344

UGLAS R. ROTHKOPF
IRMAN

ROBERT P. GUIDO
CHIEF COUNSEL

MURIEL L. GENNOSA
CATHERINE A. SHERIDAN
DEPUTY CHIEF COUNSEL

ASSISTANT COUNSEL

NANCY A. BOLGER
CHRIS G. McDONOUGH
DIANNE M. SACCONE
ELIZABETH A. GRABOWSKI
EDWARD A. TINI
STACEY J. SHARPELLETTI
MITCHELL T. BORKOWSKY
MARY J. LIEBLANG

October 30, 2002

Ms. Yva G. Scringer
255 Eastern Parkway
Brooklyn, NY 11238

Re: File No. N-2040-02

Dear Ms. Scringer:

This will acknowledge receipt of your complaint dated October 17, 2002 forwarded to this office by the NYS Grievance Committee for the Second and Eleventh Judicial Districts.

Unfortunately, we are unable to assist you. Specifically, your complaint refers to the alleged actions of a bankruptcy trustee taken within the ambit of a civil court proceeding. The Committee is never permitted to interject itself into such matters, nor does it have the power to alter any of the determinations rendered within those proceedings. You must first pursue this matter through the courts by way of motions or on appeal. We suggest you consult with your own attorney as to the legal remedies available.

Should evidence of professional misconduct be established through the course of further legal proceedings, you may renew your complaint at the conclusion thereof.

Very truly yours,

ROBERT P. GUIDO
Chief Counsel

RPG:KP

255 Eastern Parkway, #F1
Brooklyn, N.Y. 11238
718 783-3899

December 27, 2002

Via Certified Mail, Return Receipt Requested

Mr. Hersch Jacubowitz, Esq.
42-34 162nd Street
Flushing, N.Y. 11358

Dear Mr. Jacubowtiz:

Please urgently send me a copy of the retainer agreement for your representation of me in chapter 13 petition 199-21821-575. Please send it by secure mail to protect against it being lost. I need it for my appeal. Also, please send me your proof of having mailed to me a copy of Judge Swain's Order of Dismissal with Prejudice as I have maintained all along that I never received this notice either from you or from the court. If it would be more convenient for you, you can fax these to me. Just call my nephew who will turn on the fax.

Thank you for your attention to this matter.

Sincerely,

Yva G. Scringer

Atty Jacubowitz
Never answered,
only evades
calls

U.S. POSTAL SERVICE CERTIFICATE OF MAILING

MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE—POSTMASTER

Received From:

Yva Scringer
255 Eastern Parkway
Brooklyn NY 11238

One piece of ordinary mail addressed to:

Hersch Jacubowitz
42-34 162nd St
Flushing NY 11358

U.S. POSTAGE PAID NEW YORK, NY DEC. 27 02 AMOUNT $0.90 00062282-06

PS Form 3817, January 2001

Yva G. Scringer
255 Eastern Parkway, #F1
Brooklyn, N.Y. 11238
718 783-3899

APP-22

August 30, 2001

Mr. Charles Lee, Chairman and Co-CEO
Verizon
1095 Avenue of The Americas, Ste. 2001
New York, N.Y. 10036

Via Registered Mail

Via Fax: 212 395-1285

Dear Mr. Lee:

Pursuant to an investigation of possible fraud perpetrated against me, an attorney Pro Se, in connection with pending litigation in a federal court, herewith, my request for the following information within seven days of this letter's date:

To what organization and dept. was the following telephone number registered during the period November 1996 through July 1997. 718 670-7543

Alternatively, was the attached telephone number in fact registered to the bank as shown on the attached letter during the above period?

Thank you for your prompt attention to this matter.

Yours truly,

Yva G. Scringer, Attorney, Pro Se

Attachment

APP-23

41-60 Main St.
P.O. Box 322552
Flushing, N.Y. 11352-2552

Collections & Foreclosure
(718) 670-7543

November 19, 1996

GreenPoint Bank

Yua Scringer
255 Eastern Parkway
Brooklyn, NY 11238

Re:2209211

Dear Mortgage Customer(s),

This letter will confirm the Payment Plus Plan which has been approved for the above referenced account.

The account is presently due for the month of 09-01-96 and the total amount due is $3489.27 which includes late charges. An additional $261.00 will be added to your regular monthly payment until the loan is brought current. The first payment due under this plan is 11-01-96 and consists of your regular monthly mortgage payment of $ 1140.28 and the additional amount of $261.00 for a total of $1401.28. Please note that the additional amount will remain constant throughout the payment plan. However, your regular mortgage payment may be subject to change due to escrow review or interest rate adjustment (ARM loans only) and the additional amount must be added to the new monthly payment.

The late charge provision of your mortgage will remain in effect and the loans will be reported to the Credit Bureau while on the plan. This plan will be automatically discontinued if a monthly payment is not received in accordance with the plan. Please contact us if you are unable to complete these arrangements.

All payments should be sent to the attention of Mr. Joseph, Payment Plus Plan Coordinator, at the above address. If you have any questions regarding the plan, please call (718) 670-7543.

Very truly yours,

Mr. Joseph
Payment Plan Coordinator

YVA SCRINGER
255 EASTERN PKWY. #1
BROOKLYN, NY 11238

1072

11-29 19 96

PAY TO THE ORDER OF GreenPoint Bank $ 1,401.28

One Thousand Four hundred one 28/100 DOLLARS

DIME. THE DIME SAVINGS BANK OF NEW YORK, FSB
Kings Plaza Shopping Center
Flatbush Avenue & Avenue U
Brooklyn, N.Y. 11234

FOR MTG# 2209211

Yva Scringer

⑆226070296⑆ 077 050832 3⑈ 1072 ⑈0000 14028⑈

0212-0400-5

12/03/96

12775362

96-7 21

[Back up check]

March 17, 1997

Mr. Kurt Roth-Attorney-At-Law
440 Avenue P.
Brooklyn, N.Y. 11223

Dear Mr. Roth:

Enclosed check in the amount of $50.00 for Professional Services rendered(Greenpoint Bank).

Please see attached letter sent to me in October /1996 regarding a payment plan.

I called several times to the Greenpoint Bank trying to get more information on this"Mr.Joseph". I finally spoke to both Mr. Randolph and Mr. Padilla - who then told me there was no such a man as "Mr Joseph" just a pilot/project initiated by the bank to help mortgage holders.

Mr. Randolph assured me that if I would bring in $1,401.28 in person to the branch in Queens before the end of November 1996 (see copy of cancelled check) that my monthly payments would be held back until July 1997.

This was rather strange to me since the regular payments were late due to various vacancy for a few months- this meant to me as a chance to get back on my feet.

In reality if payments of $1,140.28 was difficulty at times how could I be involved in paying L,401.28?

Now either Mr.Randolph and Mr. Padilla were not too clear about this pilot/project or misinterpreted their version of it.

A payment of $2,326.18 (covering two months including late charges. (December and January)

I would not just stop payments regardless of the situation knowing what I went through to purchase this house.

Your advice is appreciated.

Yva Scringer
255 Eastern Parkway -F-1
Brooklyn, N.Y. 11238

PART II OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2002-1 NOTICE OF PRESENTMENT

(a) *Contents of Notice.*

Whenever "notice and a hearing" are specified in the Bankruptcy Code or Bankruptcy Rules but a motion or application is not mandatory, the entity proposing to act or obtain an order, in lieu of proceeding by motion or application, may proceed by giving written notice, which shall be filed with the Clerk, together with proof of service, setting forth:

(i) a statement of the action proposed to be taken or the order to be presented, including a concise statement of the terms and conditions of, and the reasons for, the proposed action or order;

(ii) the grounds in support thereof, including a concise statement of the legal authority;

(iii) the date by which objections or responses to the proposed action or order shall be served and filed;

(iv) the date and time when the action will be taken or the proposed order will be presented for signature if there is no objection, and a statement that the action will be taken or the order may be entered without a hearing unless a timely objection is made; and

(v) the date on which a hearing will be held if a timely objection is made.

(b) *Time for Notice.*

Any notice pursuant to subdivision (a) of this rule shall be given at least twenty (20) days prior to the date on which the proposed action is to be taken or proposed order is to be presented.

(c) *Entities to Receive Notice.*

In addition to the requirements of Bankruptcy Rule 2002 and Local Bankruptcy Rule 2002-2, notice under subdivision (a) of this rule shall be given to any entity having or claiming an interest in the subject matter of the proposed action or order or who otherwise would be affected by the proposed action or order.

to maintain case dockets, to maintain Judges' calendars, and to maintain and disseminate other administrative information where the costs of such facilities or services are paid for by the estate.

(b) The Clerk shall maintain a duplicate of all electronic records maintained by agents appointed by the Court.

(c) *Docket Entries.*

With the exception of proofs of claim, the Clerk shall consecutively number each paper (other than routine correspondence) filed in a case or adversary proceeding and enter that number on the appropriate docket sheet next to the corresponding entry. Proofs of claim shall be consecutively numbered and entered on a separate claims docket.

CROSS-REFERENCE: E.D.N.Y. LBR 3007-1

Rule 5080-1 FEES – GENERAL

Except as otherwise authorized, the Clerk shall not render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee has been paid.

REFERENCE: Bankruptcy Rule 1006(b)

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004-1 SALE OF PROPERTY, APPRAISALS AND AUCTIONS

(a) *Conflict of Interest.*

No appraiser, auctioneer, or officer, director, stockholder, agent, employee or insider of an appraiser or auctioneer, or any relative of any of the foregoing, shall purchase, directly or indirectly, or have a financial interest in the purchase of, any property of the estate that the appraiser or auctioneer has been employed to appraise or sell.

(b) *Notice of Sale of Estate Property by Private Sale.*

The party seeking to sell property of the estate shall give the notice required by Bankruptcy Rule 2002(a)(2). Such notice at a minimum shall contain:

(i) a general description of the property;

(ii) a statement explaining where a complete description or inventory of the property may be obtained or examined;

(iii) the terms of sale, including the upset price, if any, and the terms of any pending offers;

(iv) the place, date and time of the sale;

(v) the place, date and time the property may be examined prior to the sale;

(vi) the date by which objections to the sale must be filed with the Court;

(vii) the date of the hearing to consider any objections to the sale which are filed with the Court; and

(viii) the name and address of the Case Trustee.

(c) *Order Confirming Sale Unnecessary.*

No order will be required to effect a properly noticed, undisputed sale of property completed by the debtor in possession or Case Trustee in accordance with the terms of this rule and Bankruptcy Rule 6004. Instead, there shall be filed with the Clerk a report setting forth:

(i) date of completion of the sale;

(ii) the name or names of persons to whom the property is sold; and

(iii) the price received for each separate item or lot sold.

(d) *Appraisals.*

(i) *Filing and Access.* Any appraiser employed pursuant to § 327(a) of the Bankruptcy Code shall file with the Clerk and the United States Trustee each appraisal made of property of the estate not later than 12:00 noon on the business day prior to the scheduled sale of the property. Each appraisal shall be kept under seal upon filing and treated as confidential by the Court, the Case Trustee and the United States Trustee. Access to the appraisal may be had only by the Court, the United States Trustee, the Case Trustee and such other parties as the Court may direct, and neither they nor the appraiser shall disclose any of the contents thereof until after the consummation or abandonment of the sale of the appraised property.

(ii) *Filing Under Seal.* Any appraisals filed in connection with a sale shall have a cover sheet bearing the caption of the case in compliance with Local Bankruptcy Rule 9004-2 and the date, if any, of the proposed sale. It shall be marked as "Confidential -- Appraisal To Be Filed Under Seal."

Rule 6005-1 AUCTIONEERS

(a) *Retention of Auctioneer.*

No debtor or Case Trustee shall retain the services of an auctioneer without prior order of the Court.

(b) *Compensation.*

Compensation and reimbursement of expenses shall be allowed to an auctioneer for sales of property in an amount not to exceed:

(i) commissions on each sale conducted by the auctioneer at the following rates:

(A) 10% of any gross proceeds of sale up to $50,000;

(B) 8% of any gross proceeds of sale in excess of $50,000 but not more than $75,000;

(C) 6% of any gross proceeds of sale in excess of $75,000 but not more than $100,000;

(D) 4% of any gross proceeds of sale in excess of $100,000 but not more than $150,000; and

(E) 2% of any gross proceeds of sale in excess of $150,000; and

(ii) reimbursement for reasonable and necessary expenses directly related to the sale, including labor, printing, advertising, and insurance, but excluding workers' compensation, social security, unemployment insurance, and other payroll taxes. When directed by the Case Trustee or debtor in possession to transport goods, the auctioneer may be reimbursed for expenditures related thereto. No travel expenses shall be allowed, except as ordered by the Court.

(c) *Bond.*

An auctioneer employed pursuant to § 327 of the Bankruptcy Code shall not act until the auctioneer files with the Clerk, together with a copy to the United States Trustee, with respect to each estate, at the auctioneer's expense, a surety bond in favor of the United States, to be approved, and in such sum as may be fixed, by the United States Trustee, conditioned upon:

(i) the faithful and prompt accounting for all monies and property that may come into the auctioneer's possession;

(ii) compliance with all rules, orders, and decrees of the Court; and

(iii) the faithful performance of the auctioneer's duties.

Brooklyn, New York
August 15, 2004

Respectfully,

Yva G. Scringer

Yva G. Scringer, Pro Se
Counsel of Record for Petiitioner
255 Eastern Parkway, F1
Brooklyn, N.Y. 11238
718 622-7112 & 718 783-3899

(3)

Supreme Court, U.S.
FILED
NOV 26 2004
OFFICE OF THE CLERK

No. 04-239

IN THE

Supreme Court of the United States

Yva G. Scringer

Petitioner

v.

Green Point Bank

Respondent

Brief for Petitioner

Petition for Rehearing

Yva G. Scringer, Pro Se
255 Eastern Parkway, F1
Brooklyn, N.Y. 11238
718 622-7112 & 718 783-3899

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Your Honors:

My high esteem for this Court and your good selves is, paradoxically, a source of great pain, conflicting as it does with the unfair, capricious and arbitrary judgments to which I have been subject, starting at U.S. Bankruptcy Court and ending in the Supreme Court of the United States thus far. However, I fervently and effectually pray for deliverance from the bitter taste of injustice that plagues me upon reflecting on all of the facts because the unshakeable conclusion from which I suffer is that the Court is making new law—in violation of the principle of separation of powers-- rather than objectively, evenhandedly interpreting and enforcing the laws as written, deriving from the U.S. Constitution. Beyond the factor of race—although I am confident my experience would be impossible for a White person from, say, Brooklyn Heights, or Park Avenue, or Sutton Place to share—the cause of this unfair treatment would logically also be that the Court is unwilling to contemplate the consequences of exposing the multiple horrors assumed—or at least hoped-- to be alien to American jurisprudence, which my case has exposed. By faith and irrefutable facts, I intend to show that denial of my rights constitutes the greater rather than the lesser evil. Accordingly, this "Petition for Rehearing" is, in good faith, submitted from the standpoint of consequences of the decision to sacrifice the widow's rights in defiance of the Prophet Amos' admonitions at Amos 5:10-24.

I understand that only a miracle can allow me to prevail, but with God all things are possible.

ARGUMENT:

I Consequences of allowing absence of evidentiary record

Through the rulings in my case it is now established that transcripts are optional and discretionary in contradiction of the principle, rules, statutes, law that an evidentiary record must unfailingly be maintained. Henceforth, Moore's Federal Practice, v.18, Rule 80 on "Transcription error & [sanctity of]Judicial machinery" are merely academic. No longer need "the machinery of justice" be cause for concern, no longer can it be considered sacrosanct. Since my purchase orders were timely submitted for critical transcripts which as ***surprise*** were revealed to be missing in such key hearings as February 11, 2000 (Confirmation of 99-21821-575) and August 25, 2000 (Prejudice Order re: 99-21821-575) and other key hearings, such as 341 Hearing of June 20, 2001 re: related case -01-15887-608) and other hearings—it was impossible for the "record on appeal" to have been fully transmitted since it had been deleted, presumably inadvertently. Such provisions of law as U.S.C.A. 28, Rule 80, Court transcripts as evidence, necessary to discovery; U.S.C.S. 28 Rule 753 , Bankr Rule 5007 Mandatory creation and maintenance of transcripts are pleasing to the eye and ear—but I have not known them They are totally foreign to my experience. If the mandated record is so irregularly incomplete as I have shown it to be in my principal Brief in this Court as in all lower courts, it is, perforce, impossible to ascertain the "merits" of my case. Yet it has been repeatedly ruled that my case is "without merit". This is compelling proof, therefore, that transcripts are optional and discretionary, the rules, statutes, laws mandating them to the contrary notwithstanding. I am satisfied that each and every member of the Court, standing, by imagination, as I am before the bar, would consider this condition absolutely outrageous, unacceptable and intolerable. Not one would ever boast of justice in America were they forced as I am to take this disgraceful situation and like it. The fact is that I do not like it and the Lord God Who sits high and looks low encourages me to say so and to have the good sense and self esteem not to like it. The telling clue to the injustice being

done relative to the missing transcripts is the fact that not one lower Court has addressed this irreplaceable component of justice. The consequence of the Court's cavalier dismissal of my protest relative to missing transcripts is that "injustice in my case translates to injustice generally" and the erosion of the judicial system's integrity, like some ominous portent, is clearly visible. Rather than provide me even some perverse sense of satisfaction that the system shall ultimately pay for its, frankly, irresponsible disregard for its own tenets – to the contrary, such laxity truly frightens me because I love America, yet I am forced to watch her grow old, it seems, before her time. I am too painfully aware of her needless vulnerability through callous trampling on the least of her citizens. If I had not ordered key transcripts for 99-21821-575 timely as I did on 6/19/01 – the date of the very first Hearing on 01-15887-608, it might have been counted against me. However I did so order the transcript(s) for 99-21821-575 which Judge Craig said could not be modified without unusual circumstances which in my Order to Show Cause I immediately proved existed by (a) the fact that the 5/10/01 sale was illegal since the previous case 99-21821-575 was still open; and (b) no transcripts existed, as revealed by the Court's inability to deliver these to me till this day. (See Bromberg v. People of Illinois, 136 III App 602, establishes remedy for loss of crucial transcripts). Surely, this is a major surprise, qualifying for Bankr 9024, FRCP (Rule 60) relief, because if it is not, we are all in deeper trouble than we would like to think.

II. Consequences of permitting property sale before Closing of Case (11 U.S.C.A, Sect. 541(a)(1))

My case as precedent now permits deletion of all Bankruptcy code relative to the steps, which, heretofore, were set forth as mandatory, following the Dismissal of a case which had always, everywhere, been established as merely ***one step in a process of undoing the Order of Confirmation.*** All statutes,

rules, laws pertaining to (a) discharge of Trustee; (b) Cancellation of Bond; (c) Issuance of Court Order to Close Case – these "troublesome steps" are now effectively – albeit wrongly-- deemed "administrative details", even as the errant Trustee Stuart Gelberg contemptuously pronounced them in the Bankruptcy Court before Judge Dennis Milton on 9/26/01. This new "judge made rule" will greatly relieve all of the Courts' burdensome dockets since countless man hours will be saved by these highly advantageous shortcuts to justice. Certainly, the creditor banks are hugely benefited with an incredible new ability to seize assets, collateral, properties without the "profitless" tedium of "due process". This historic development is a boon to banking where the time value of money is thus magnified and "acceleration of capital" replaces the tiresome mere "velocity of capital". (See Bankruptcy rules 718 & 5009, Case closing)

III. Consequences of overlooking Referee's conflict of interest

Consequences of overlooking Referee's conflict of interest in my case are that Part 36 of Chief Judge Rules of State of New York on Referees can now be ignored by other referees and courts and creditors. It can be rescinded altogether to eliminate the need for unnecessary time consuming study and irrelevant research. The referenced ethics models are now irrelevant as it relates to such cases as mine, wherein a referee maintains an ongoing close business relationship with the creditor – Green Point Bank, in this case, where the Referee conducting the sale at auction, was and remains a tenant in the commercial office of the Bank at 356 Fulton Street, Brooklyn, New York, which is the same building in which the bank itself is located, as owners of the building. The bank's otherwise problematic, inherently conflicting role as both creditor-lienor relative to a debtor and also landlord to an intervening heretofore objective Referee, no longer has significance and it will no longer constitute a

troubling "surprise" or "discovery" or "inexcusable neglect", etc to find such a Referee to be a tenant beholden to one of the parties in a legal matter. Law publisher, Matthew Bender, must now commission Bergman (author, "New York Mortgage Foreclosures") to write new chapters on "Referees' Powers and Responsibilities". Also, see Betcher v. Rademacher, 35 Misc. 2d 693, 230 N.Y.S. 2d Kingsland v. Chetwood, 39 Hun. 602 (1886). Citibank v Shroeder, 266 A.D. 2d 332, 698 N.Y.S. 2d 304 (2d Dept. 1999), citing Corporate Investing Co. v. Mount Vernon meal Products Co., c., 206 App. Div. 273, 276, 200 N.Y.S. 372, quoting Wilcox v. Drought, 36 Misc. 351, 73 N.Y.S. 587 Lobbet v Galpin, 228 A.D. 65, 239 N.Y.S. 76(4th Dept. 1930);Corporate Investing Co. v. Mt. Vernon Metal Products Co.,06 A.D. 273, 200 N.Y.S. 372 (2nd Dept. 1923), Roslyn Sav. Bank v. Jones, 69 Misc. 2d 733, 330 N.Y.S. 2d 954 (1972) All show Referee powers and Responsibilities

IV. Consequences of allowing property sale before Discharge of Trustee, Cancellation of Bond, and issuance of Court Order to Close Case

In all past cases where these conditions were required to be met before the property of the estate could become eligible for foreclosure and sale at auction, all such creditor banks may now return to Court with real hopes of satisfaction. They were needlessly hindered from seizing property by evidently optional, discretionary, dispensable requirements. At the very least, certainly going forward, creditors are now unfettered in these regards. Even if a spirit of injustice has been unleashed on the downside which will infect, pollute and further damage the staggering conscience that is willing to countenance this state of affairs, on the upside, the prospect of a more efficient banking industry is far too attractive to ignore through "quaint" pre-occupations with "quaint" notions about justice for one poor little Black woman whose deliverance from the oppression presents no clear

percentage in the undertaking. (See bankruptcy rules 718 & 5009, Case closing). The consequence of ruling as though this equating of case dismissal were normal and acceptable is progressive chaos, accompanied by lost judicial credibility.

V. Consequences of ignoring timely citation of Local Rules violation relative to 99-21821-575 when the violation was cited in related case 01-15887-608 on 7/09/01 in the Order to Show Cause, thereby constituting an integral part of the record on appeal

If I had not specifically invoked the Local Rules 2002, of Bankruptcy, citing their violation by the creditor bank and trustee relative to both 01-15887-608 and 99-21821-608, with the consequent illegality of the 5/10/01 sale, then, yes, I would not have had so strong a basis as I have for pursuing justice as tenaciously as I have. **However, I did in fact cite the Local Rules and when the Court stated, as the transcript of 7/11/01 shows in my original petition of June 7, 2004 that there was no problem with a foreclosure sale where there was no automatic stay in effect for 01-15887-608, I answered that there was, in fact, a stay through 99-21821-608, the previous case. (See transcript of 7/11/01 Hearing, page 19, lines 14-23). The Court's revealing response was that the case was dismissed and for all of the reasons set forth throughout petitions in each and every one of the Courts below and including this, the Supreme Court of the United States, that response by the Bankruptcy Court shows that an unacceptable rule is being made, a "judge made rule".** (See Mertens, William J , Alex W. Bandrowski, James A. Clark and Russel Franz, petitioners, v Hewitt Associates on Writ of Certiorari to the U.S. Court of Appeals for the 9th Circ. (June 1, 993) Judge made rule. Also see Midlantic Nat'l Bank v NJ Dept. of Environmental Protection Certiorari to the U.S. Court of Appeals for the 3d Circ. No. 84-801. Trustee's right to abandon property subject to mandates re: Public safety; also "judge made rule must give way when it comes into conflict

with a statute" Also see Midlantic Nat'l Bank v N.J. Dept. of E.P., U.S. Supreme Court, 474 & S. 494 (1986), Trustee right to abandon property and judge made rule.

VI. Consequences of disallowing relevancy of Rule 9024, FRCP Rule 60 and its application to this classic case which is rife with "surprise, discovery, inexcusable neglect, errors in law, inadvertence"

On 6/19/01 the Court (Judge Carla Craig) quoted the law relative to relief from "surprise, discovery, inexcusable neglect, errors in law, inadvertence". She cited this rule 9024 FRCP Rule 60 as the only basis upon which she could revisit another Judge's Order. Upon my filing of an Order to Show Cause, citing the illegality of the 5/10/01 sale due to violation of the local rules, the Court, checking the docket and the files found that I was telling the truth and this was the basis upon which the court then modified the 8/25/00 Prejudice Order by allowing me to file a confirmable plan. This was the brightest moment throughout all this litigation, when the court, seeing the truth, acted upon it in the strictest adherence to the law which revealed that the previous case, not having yet been closed, therefore exposed the 5/10/01 sale as illegal. The consequence of denying the applicability of rule 9024 FRCP Rule 60 is to show that a Black person—absent a great deal of money—is not going to qualify as a candidate for relief, no matter how gross are the violations against him or her in matters relating to property, which is why Black people are being separated from their land and property nationwide as authoritative, credible reports periodically show. If the above stated rule does not apply to my case, then it applies to no other case, since it would be very, very difficult to find a case more outrageously fitting the profile for relief than mine.

VII Consequences of denial of rights through injudicious use of nunc pro tunc principle.

The consequence of injudicious application of nunc pro tunc principle in a case like this is that the intention to circumvent the law as an unfair accommodation in favor of the creditor is painfully obvious and it makes a mockery of the "sacred" time line. Whereas everyone knows—even including lay persons such as myself—that the Docket is not to be tinkered or toyed with, yet by this "magical" device, "time travel" is accomplished, which most rational people consider impossible, at least with respect to traveling into the past. This arbitrary and capricious application of a very special principle permits absurd breaches of law and order which must not be countenanced, not even in my case. This technique advertently or inadvertently—I frankly, do not know which one I am dealing with!—circumventing the rules supports what I have coined as "Predatory foreclosure", the close relative of "Predatory lending". It is beautiful, from the creditor's standpoint, at least. From now on, a creditor bank through their attorney and the trustee, need only apply for "dismissal" of a case before going straight to auction, because if the debtor should, miraculously realize that his rights are being abridged and insist upon the full formalities; even if the sale of the property has already been "perpetrated"—the creditor bank need only allow the court to close the case, nunc pro tunc, thus curing the embarrassment otherwise attending omitted "administrative details"

Conclusion

Although my last attorney, Mr. Andrew Nitzberg, misappropriated my $300 docket fee U.S. Postal money order #06903921284 by replacing it with U.S. Postal money order #9905479625 as explained by the U.S. Post Office letters annexed hereto, I have, through great sacrifice, raised the rehearing fee of $200 to persevere despite Green Point Bank's attorney's (Mr. Matthew G. Roseman's) successful intimidation of Mr. Nitzberg which successfully dove him off, abandoning me as all court officers have. Most encouraging,

however, is the fact that two world class law firms have offered to argue my case—one free of charge!– before this Court upon the granting of the Writ of Certiorari. Also, I expect an Amicus Brief from Professor Zinman,

The fig leaf covering the misdeeds and errors of creditor and courts, respectively--namely my inadvertent but unforgiven filing in the face of the August 25, 2000 Prejudice Order– is now withered and offers no justification or defense for the travesty to which I have been subject. Neither the existence, nor nonexistence of the August 25, 2000 Prejudice Order bore any relevance whatsoever to the premature, ergo, illegal auction-sale of the real property of the estate. One issue has absolutely nothing at all to do with the other. Even if the Courts had sanctioned me for violating a Court (Prejudice) Order—which it should not have due to the manifest ineffective assistance of counsel—still, the bank acted illegally when it engaged a Referee to conduct the May 10, 2001 auction and now the consequences of this relaxation of normal constraints upon creditor and referee open wide the doors to widespread, nationwide circumvention of the clearest rules, bankruptcy code, and underlying statutes concerning heretofore mandatory steps to satisfy requirements for case closing. Dismissal alone could never have met those requirements and the August 25, 2000 Dismissal with Prejudice did not meet those requirements in my case. Judge Carla Craig of Bankruptcy Court knew that which is why she, de facto, modified the Prejudice Order, and invited a "confirmable plan" which I could not deliver only because I had no technical understanding of certain questions. I had the income, as the Trustee, Macco, saw, who accepted payments from me. The consequence is that the Bankruptcy Code is now severely and irrevocably compromised on this crucial point of the bankruptcy process which by law and Bankruptcy Code is comprised of (a) Petition; (b) Confirmation; (c) Dismissal; (d) Case Closing. What the creditor bank illegally did and the Courts improperly allowed was (a) Petition; (b) Confirmation; (c)

Dismissal; (d) ***SALE AT AUCTION;*** (e) Case Closing. Since conscience is inarguably the cornerstone of jurisprudence, I need yield to no man in claims to that universally native genius, which is inherited without formal learning and which cannot be purchased, nor can it be bestowed by scholars conferring degrees. Even so, it has been codified by a magnificent body of law, which I testify has been grossly violated in my case. I am comforted somewhat by the certain knowledge that no one reading this factual account of my experience can honestly say without perjuring himself or herself, that they would consider justice to have been done were they in my place. Since these Petitions, Briefs, Appeals to the Court are more than mere intellectual exercises; since they are in fact fervent prayers, not merely for myself, but for America's wellbeing, I am serene in the faith that my words and the spirit that have inspired and formed them are capable of touching the Creator, and it is the Creator, not man, Who shall decide. The heart of the king is in the Hand of The Lord.

In that event, to God be the Glory for His mercy upon the powerless widow and the helpless orphan, who will shout "Surely, there is a God".

Since this predominantly Conservative Court favors prayer in schools and welcomes inclusion of God, essentially, in all human affairs, I believe I will be forgiven, even if not rewarded by the Court, for ending all of my litigation now in Jesus' Name.

November 26, 2004
Brooklyn, New York

Yva G. Scringer

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718 622-7112 & 718 783-3899

RULE 44.2 CERTIFICATION

I, Yva G. Scringer, attorney, Pro Se, certify that this Petition for Rehearing is presented in good faith and not for delay (as the property is already sold) and that its ground are limited to intervening circumstances of a substantial or controlling effect (e.g., U.S. Post Office evidence of Nitzberg's, (the latest attorney's) misconduct in cooperating with the Respondent (Green Point Bank) by abandoning me due to their unlawful, unethical pressure; consistent with misconduct of first attorney, Jacubowitz (ineffective assistance of counsel), failure of Trustee Gelberg to formally abandon property of estate and Referee Horowitz's conflict of interest; and to other substantial grounds not previously presented—specifically, the consequences of the Supreme Court's ruling relative to nullification of all rules, statutes, code controlling all actions formerly necessary upon dismissal of a chapter 13 case that has been confirmed. The petition is restricted to the grounds specified in this paragraph.

November 26, 2004
Brooklyn, New York 11238

Yva G Scringer

Respectfully,
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